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**DATES OF RELEVANT PROCEEDINGS  
IN LOWER COURTS**

1. Complaint in Chancery, filed September 12, 1963, with exhibits.
2. Motion for Temporary Injunction, filed September 17, 1963.
3. Temporary Injunction Order, entered on September 19, 1963.
4. Amended Complaint in Chancery, filed September 25, 1963, with exhibits.
5. Motion for Temporary Injunction, filed October 17, 1963.
6. Order for Temporary Injunction, entered on December 13, 1963.
7. Answer of Shell Oil Company, filed December 19, 1963.
8. Answer of Harry H. Hulman, Director of the Department of Revenue, filed January 10, 1964.
9. Stipulation, filed January 19, 1966, with appendices.
10. Interrogatories, filed January 17, 1966.
11. Reply to interrogatories, filed November 15, 1966.
12. Additional Stipulation, filed January 18, 1968.
13. Amended Answer of Shell Oil Company, filed January 26, 1968.
14. Order setting cause for trial and granting leave to substitute Theodore A. Jones as a party-defendant, entered December 12, 1967.
15. Answer (of Harry L. Hulman, Director of the Department of Revenue) to Amended Complaint, filed February 10, 1968.
16. Order of Permanent Injunction, entered on February 14, 1968.

17. Report of Proceedings in the Circuit Court of Cook County, Illinois held on February 14, February 15, February 16 and February 19, 1968.
18. Opinion of Circuit Court of Cook County, Illinois, delivered on December 9, 1968 and ordered filed on December 23, 1968.
19. Final Decree of Circuit Court of Cook County, Illinois, entered on December 23, 1968.
20. Notice of Appeal to Illinois Supreme Court, filed January 13, 1969.
21. Opinion of the Supreme Court of the State of Illinois, filed April 1, 1971.
22. Petition for rehearing in Illinois Supreme Court, filed May 1, 1971.
23. Order entered October 4, 1971, denying petition for rehearing.
24. Notice, motion and order of Justice Daniel P. Ward filed October 15, 1971, staying the mandate until completion of appeal proceedings before the United States Supreme Court.
25. Notice of Appeal to the Supreme Court of the United States, filed December 20, 1971.

\*[038]

Filed Sept. 25, 1963

STATE OF ILLINOIS }  
COUNTY OF COOK } ss.

IN THE CIRCUIT COURT OF COOK COUNTY

UNITED AIR LINES, INC.

Plaintiff,

v.

HARRY L. HULMAN, Director of Revenue  
of the Department of Revenue of the State of  
Illinois, WILLIAM G. CLARK, Attorney Gen-  
eral of the State of Illinois, WILLIAM J.  
SCOTT, Treasurer of the State of Illinois, and  
SHELL OIL CO., a Delaware corporation,

Defendants.

63 C 17049

This Amended Complaint is filed pursuant to and in ac-  
cordance with the order entered by Judge William V.  
Brothers on September 19, 1963.

AMENDED COMPLAINT IN CHANCERY

UNITED AIR LINES, INC., plaintiff, for and on behalf  
of itself and all others similarly situated, by its attorneys  
and attorneys for all other members of the class of  
taxpayers to which plaintiff belongs, complains against  
HARRY L. HULMAN, Director of Revenue of the Depart-  
ment of Revenue of the State of Illinois, WILLIAM G.  
CLARK, Attorney General of the State of Illinois, WIL-  
LIAM J. SCOTT, Treasurer of the State of Illinois, and  
SHELL OIL CO., a Delaware corporation, defendants, and  
alleges as follows:

• Numbers in brackets [ ] throughout Appendix indicate page  
references to official record.

[039] 1. Plaintiff is a corporation subsisting under the laws of the State of Delaware, with its principal place of business located at 1200 Algonquin Road, Elk Grove Township, Cook County, Illinois, and is qualified to do business in Illinois.

2. Defendant Harry L. Hulman is the duly appointed, qualified and acting Director of Revenue of the Department of Revenue of the State of Illinois, and in that capacity is charged with administering and enforcing the revenue acts of the State of Illinois including the Use Tax Act, Ill. Rev. Stat. 1961, ch. 120, §§ 439.1 *et seq.*

3. Defendant William G. Clark is the duly elected, qualified and acting Attorney General of the State of Illinois, and in that capacity is charged with the duty of representing defendant Harry L. Hulman, as Director of Revenue, in all legal proceedings involving the administration, enforcement and collection of the Illinois use tax.

4. Defendant William J. Scott is the duly elected, qualified and acting Treasurer of the State of Illinois, and in that capacity is the legal custodian of funds in the State Treasury resulting from and created by the collection of Illinois use tax.

4A. Shell Oil Co. is a corporation subsisting under the laws of the State of Delaware, with its principal place of business located at 50 West 50th Street, New York City, New York, and is qualified to do business in the State of Illinois.

[040] 5. The class to which plaintiff belongs, and on behalf of which it has instituted this action, is described in paragraph 27.

6. Plaintiff brings this action under the general chancery jurisdiction of this Court to enjoin imposition of illegal, unauthorized and invalid tax based on the authority

of *Owens-Illinois Glass Co. v. McKibbin*, 385 Ill. 245, 256 (1944), in which the Illinois Supreme Court stated as follows:

"From the foregoing resumé the enjoining of the collection of illegal taxes constitutes an exception to the general rule that equity will not take jurisdiction of a cause when there is an adequate remedy at law. It is established that where a tax is unauthorized by law, or where it is levied upon property exempt from taxation, equity will take jurisdiction and enjoin the collection of the tax. This constitutes an independent ground of equitable relief, and in such cases it is not necessary that special circumstances exist to authorize issuing an injunction. It is also the rule in such cases that where remedies are provided by statute they are cumulative, and are exclusive only where they have been first invoked by the taxpayer. And it is to be noted this exception to the general rule applies only to the illegal and unauthorized imposition of a tax, and not to irregularities in levying a lawful tax."

See also *Johnson v. Halpin*, 413 Ill. 257 (1952).

7. To the extent that payments of the use tax may be made under protest by plaintiff or other members of the class to which plaintiff belongs, this action is also brought pursuant to Sections 2a and 2a.1 of the Act of June 9, 1911, as amended (known sometimes as the Public Moneys Act or as the Protest Fund Act), Ill. Rev. Stat. 1961, ch. 127, §§ 172, 172(a).

8. Plaintiff is, and continually since January 1, 1960 (the period to which this complaint pertains) has been, the [041] holder of certificates of public convenience and necessity issued to it by the United States Civil Aeronautics Board under the provisions of the Federal Aviation Act of 1958, as amended, 49 U.S.C. §§ 1301 *et seq.*, authorizing it to engage in the transportation of persons, property and United States mail by air on regularly scheduled



flights between designated terminal and intermediate points on routes described in such certificates. A map of plaintiff's certified routes is attached hereto and incorporated herein as Exhibit A. Plaintiff thereby also is authorized to operate charter flights without regard to the points named in such certificates.

9. Pursuant to these certificates of public convenience and necessity plaintiff performs, and during all or a portion of the period since January 1, 1960, has performed, common carriage by aircraft of persons, property and United States mail on scheduled flights between points within the State of Illinois, on one hand, and points within the States of Massachusetts, Connecticut, Rhode Island, New York, Maryland, Virginia, Pennsylvania, Ohio, Michigan, Indiana, Wisconsin, Minnesota, Iowa, Nebraska, Missouri, Colorado, Utah, Nevada, Idaho, Washington, Oregon, California, Hawaii and the District of Columbia on the other hand. During this period plaintiff has also performed common carriage by air of persons and property on charter flights between points within the State of Illinois and points outside the State of Illinois, including flights to Canada.

[042] 10. The points within the State of Illinois from and to which plaintiff presently operates aircraft are O'Hare International Airport, Chicago, and Quad-Cities Airport, Moline. For a period after January 1, 1960, plaintiff also operated aircraft from and to Midway Airport, Chicago.

11. All flights to and from Chicago are, and since January 1, 1960, have been, from or to points outside Illinois, except for limited scheduled service between Chicago and Moline and some intrastate charter flights.

12. In excess of 99.5% of all flights of plaintiff's aircraft departing pursuant to plaintiff's certificates of public convenience and necessity since January 1, 1960, from Midway

and O'Hare Airports have been according to published schedules filed with the United States Post Office Department and the Civil Aeronautics Board. Most of the remaining  $\frac{1}{2}$  of 1% have been charter flights. There has also been a *de minimis* amount of training, testing, ferry, and non-revenue flights for purposes of positioning aircraft, which are not flights pursuant to plaintiff's certificates of public convenience and necessity.

13. At present, and since January 1, 1960, most, if not virtually all, plaintiff's flights departing from O'Hare and Midway Airports take and have taken on fuel, either as aviation gasoline for piston engine aircraft or kerosene for turbine aircraft.

14. All such fuel loaded aboard plaintiff's flights departing from Chicago is, and since January 1, 1960, has [043] been, purchased by and delivered to plaintiff outside Illinois, specifically at East Chicago and Hammond, Indiana, pursuant to contracts negotiated and executed outside Illinois.

14A. The seller of all such fuel is, and during the applicable period was, Shell Oil Co. Shell Oil Co. does not, and during the applicable period has not collected Illinois use tax from plaintiff, a practice established in 1955 and continued uninterrupted since then with the repeated approval of authorized representatives of the Director of Revenue and his predecessors in office.

15. After purchasing the fuel and receiving delivery of it outside Illinois, plaintiff causes, and since January 1, 1960, continuously has caused, such fuel to be transported by truck or pipeline to storage facilities near and on O'Hare and Midway Airports.

16. As operations require, the fuel is, and since January 1, 1960, has been, withdrawn from the storage facilities at

Midway and O'Hare Airports for loading aboard plaintiff's flights departing from such airports. Such fueling is customarily done immediately prior to departure.

17. The actual course that all plaintiff's flights take, or have taken since January 1, 1960, is and has been governed by the Federal Aviation Agency, established by the Federal Aviation Act of 1958, *supra*. Such actual courses are determined by "departure routes" which govern the climb portion of a flight, and "airways" which govern the cruise portion. The same departure routes and airways customarily [044] are assigned to plaintiff for particular flights, although there may be and are certain variations on a given day from either such typical departure routes or airways depending on weather and other operating conditions. Despite these day-to-day variations, plaintiff's flights departing from O'Hare are being, and flights which have departed from O'Hare and Midway Airports since January 1, 1960, have been, flown on what can be accurately described as "typical" departure routes and airways. Although such departure routes and airways have varied from time to time and according to the type of aircraft being flown, at present for eastbound flights there are three principal ones, for northbound two, and for westbound four.

18. Pursuant to regulations of the Federal Aviation Agency, all aircraft operated by plaintiff are, and since January 1, 1960, have been required to maintain a "reserve fuel supply," above and beyond that required to transport a plane to its scheduled destination. Such reserve fuel requirements have varied from time to time, and vary according to the type of aircraft involved and with anticipated weather conditions. A current example is that the reserve fuel requirement for a Boeing 720 or a Douglas DC-8 four-engined jet is 8,000 pounds of fuel, plus, if weather conditions require the specification of an alternate

destination on the flight plan, such additional fuel as is required to take the plane from its scheduled destination to the specified alternate point for such flight. Typical alternate points for jet aircraft destined for Chicago include [045] Minneapolis, Omaha, Milwaukee, Detroit and Cleveland.

19. Plaintiff has established, in the conduct of its flight operation, reserve fuel requirements which are, and since January 1, 1960, continuously have been, in excess of those of the Federal Aviation Agency. For example, plaintiff's current reserve requirement for Boeing 720 and Douglas DC-8 aircraft is a minimum of 12,000 pounds, plus, if weather conditions require the specification of an alternate destination on the flight plan, the greater of 3,000 additional pounds of fuel or such additional fuel as is required to take the plane from its scheduled destination to the specified alternate point for such flight.

20. Because of the reserve fuel supply required by the Federal Aviation Agency, as supplemented by plaintiff's operating regulations, plaintiff's aircraft landing at Midway and O'Hare Airports almost always have a considerable amount of fuel aboard. Engineering fuel consumption data, confirmed by actual spot testing of individual flights, show that virtually all, if not all, of plaintiff's planes which have arrived at Midway or O'Hare Airports since January 1, 1960 have had sufficient fuel aboard when they landed to take them, without additional fuel, outside Illinois on the plane's actually succeeding flight on typical (as described in paragraph 17) eastbound or northbound airways, taking into account fuel consumed in taxing, run-up, take-off, climb and cruise. According to engineering fuel consumption data, confirmed by actual spot checks, a similar condition appears to have existed [046] on virtually all flights departing Illinois using typical westbound airways, with the exception of a small number of piston engine flights to

Kansas City. It follows, from a traditional and realistic first-in, first-out viewpoint of fuel consumption, that with *de minimis* exceptions, none of the fuel loaded aboard at O'Hare and Midway Airports by plaintiff since January 1, 1960, is or has been actually used or consumed within the borders of Illinois (excluding certain intrastate flights on which the applicable Illinois use tax has been and is being paid).

21. By a series of letter opinions issued in 1955 and thereafter, examples of which are set forth as Exhibits B and C attached hereto and incorporated herein, the Director of Revenue, and his predecessors in office, have taken the position that fuel purchased by interstate carriers outside Illinois, brought into and temporarily stored by them in Illinois, is subject to use tax only to the extent of the portion of such fuel actually used or consumed by being burned off within Illinois. Such ruling also relieved retailers of the fuel from the duty of collecting the use tax in such situations, and required the carrier to directly file a use tax return and pay the tax according to what was actually burned off by it within Illinois.

22. The interpretation set forth in the preceding paragraph was, upon information and belief, repeatedly reiterated since 1955 by auditors representing the Director of Revenue during the examination of the books and records of numerous carriers and by other representatives of the Director [047] of Revenue upon inquiry by interested persons. This interpretation in fact was a publicly known policy and practice of the Director of Revenue.

23. This interpretation of the Director of Revenue, and his predecessors, continuously in effect from 1955 until June of 1963, has, upon information and belief, been known and relied upon by numerous carriers and by numerous retailers of fuel.



24. This interpretation of the Director of Revenue, and his predecessors, has been known and relied upon by the plaintiff since 1955. Plaintiff accordingly has for all periods involved since that date to the present time filed Illinois use tax returns and paid use tax on fuel which it purchased outside Illinois, stored in Illinois and loaded in Illinois aboard aircraft in the conduct of its operations to the following extent:

(a) On all fuel consumed on flights originating within and terminating within Illinois (intrastate operations) and

(b) On a portion of the fuel deemed to have been used and consumed (burned off) in Illinois on flights departing from Midway and O'Hare to points outside Illinois. The computation of the use tax paid under this arrangement is and has been pursuant to a formula accepted by representatives of the Department of Revenue during several audits since 1955.

[048] 25. Acting within his authority as Director of Revenue of the Department of Revenue of Illinois, the defendant Theodore J. Isaacs, on June 3, 1963, issued an interpretation in the form of a Bulletin entitled, "Temporary Storage of Motor Fuel under Provisions of the Use Tax Act", a copy of which is attached hereto and incorporated herein as Exhibit D. This Bulletin provides in part that "... temporary storage ends and a taxable use occurs when the fuel is taken out of storage facilities and is placed into the tank of the airplane, railroad engine or truck. At this point the fuel is converted into its ultimate use, and, therefore, a taxable use occurs in Illinois."

26. By this interpretation, the Director of Revenue is asserting that temporary storage of fuel ends when such fuel is loaded in Illinois aboard air, land and water (although the latter are not specifically mentioned in the

Bulletin) craft or vehicles, and that therefore such fuel is subject to Illinois use tax, regardless of whether it:

(a) is used and consumed in the integral conduct of interstate and foreign commerce, or

(b) in whole or in part is used and consumed outside Illinois.

27. By this interpretation, the Director of Revenue is asserting that use tax due as aforesaid on all fuel loaded in Illinois aboard aircraft of the plaintiff and all other air carriers and upon the vehicles or craft of all railroads, truck lines, bus lines, barge lines and steamship companies [049] which operate in interstate or foreign commerce as common, contract or private carriers. Such carriers constitute a class, all of which have the same issues of law in fact, as does the plaintiff—to wit, the applicability of the Illinois use tax to fuel which, having been purchased outside Illinois and stored in Illinois by the carrier, is loaded by it in Illinois aboard craft and vehicles to be used and consumed in propelling such craft or vehicles in interstate and foreign commerce.

28. By this interpretation, the Director of Revenue applies the use tax to fuel in a manner different from all other types of tangible personal property, in that the act of preparing to transport some or all of the fuel outside the State is deemed to be a taxable use. No other interpretation by the Director of Revenue applies such a rule to any other types of tangible personal property.

29. By this interpretation, the Director of Revenue distinguishes, for purposes of applying the use tax, the type of container in which fuel is stored, in that fuel stored in the tank of a craft or vehicle is not considered temporary storage in contrast to storage in any other form of container or facility. No other interpretation by the Director

of Revenue applies such a rule to the storage of any other type of tangible personal property.

30. The interpretation of the Director of Revenue set forth in the Bulletin dated June 3, 1963, is contrary to the intention of the General Assembly and the express language [050] of the Use Tax Act in the following respects:

(a) it is contrary to Section 3 of the Use Tax Act, Ill. Rev. Stat. 1961, ch. 120, § 439.3, which imposes the tax "... upon the privilege of using in this State tangible personal property ... [emphasis supplied]";

(b) it is contrary to the plain meaning and intended scope of the definition of "use" set forth in Section 2 of the Act, *id.* § 439.2;

(c) it is contrary to the plain meaning and intention of the "temporary storage" exemption set forth in Section 3 of the Act, *id.* § 439.3.

31. The allegations set forth in the preceding paragraph are confirmed by the following rules of statutory construction uniformly followed by the Courts of this State:

(a) the interpretation of the Director of Revenue would, as alleged in paragraphs 28 and 29, apply the use tax on fuel in a way different from the application of such tax to all other types of tangible personal property, thus infringing upon the rule of uniform and consistent construction of tax acts;

(b) the interpretation of the Director of Revenue would be contrary to the common and ordinary meaning of the words "use" and "temporary storage". See *Revzan v. Nudelman*, 370 Ill. 180, 184-5 (1938);

(c) the interpretation of the Director of [051] Revenue would be contrary to his long-continued interpretation and application of the Use Tax Act relating to fuel loaded in Illinois aboard craft and vehicles engaged in interstate and foreign commerce, which interpretation and application can be deemed to have been

approved by the General Assembly because of its failure to amend or clarify the relevant statutory language, particularly, when it repeatedly amended since 1955 Sections 2 and 3 of the Act. See *e.g. People v. Lyons*, 1 Ill.2d 409, 414 (1953) and

(d) the interpretation of the Director of Revenue would violate the established rule, as stated in *Ingersoll Milling Machine Co. v. Department of Revenue*, 405 Ill. 367, 373 (1950):

"Taxing statutes are to be strictly construed and their language is not to be extended or enlarged by implication beyond its clear import, but in cases of doubt such laws are construed most strongly against the government and in favor of the taxpayer."

32. The interpretation of the Department of Revenue is contrary to the Constitution of Illinois in the following respects:

(a) the application of the use tax to fuel in a manner different from all other types of tangible personal property, as more fully set out in paragraph 28, constitutes an unreasonable classification in violation of the Revenue [052] Article, Article IX, § 1;

(b) the application of the use tax according to the type of container in which the fuel is stored, as set forth in paragraph 29, constitutes an unreasonable classification in violation of the Revenue Article, Article IX, § 1, in that (i) it applies the temporary storage exemption to fuel in a way different from all other types of tangible personal property, and (ii) further, it discriminates against air and water carriers which are less able than land carriers to transport fuel in tanks unconnected with the motive power of the craft or vehicle;

(c) the application of the use tax as set forth in subparagraph (a) above violates the Due Process Section, Article II, § 2;

(d) the application of the use tax as set forth in subparagraph (b) above violates the Due Process Section, Article II, § 2;

(e) the application of the use tax to all fuel loaded aboard craft or vehicles in Illinois, even though such fuel actually is used and consumed outside Illinois violates Article IV, § 13, in that such application of the tax would not conform to the title of the Use Tax Act which is "An Act in relation to a tax upon the privilege of using tangible personal property *in* this State [emphasis [053] supplied]". Ill. Laws 1955, p. 2027, as amended, Ill. Laws 1959, p. 654, § 2.

33. If the interpretation of the Director of Revenue is construed to impose the use tax on either (i) the loading in Illinois of fuel aboard aircraft or vehicles about to commence journeys in interstate or foreign commerce or (ii) upon the use or consumption of the fuel in the interstate or foreign journey, such interpretation would violate the Commerce Clause, Article I, § 8, cl. 3, of the United States Constitution, in that it would directly burden and would tend to create multiple burdens on interstate commerce.

34. If the interpretation of the Director of Revenue is construed to impose the use tax on either (i) the loading in Illinois of fuel aboard craft or vehicles about to commence journeys in foreign commerce, or (ii) upon the use or consumption of the fuel in foreign commerce, such interpretation would violate the Import-Export Clause, Article I, § 10, cl. 2, of the United States Constitution.

35. If the interpretation of the Director of Revenue is construed to impose the use tax according to the distinctions more fully outlined in paragraphs 28 and 29, such imposition would, as an unreasonable and arbitrary classification, violate the Due Process and Equal Protection Clauses of the United States Constitution.



36. The Director of Revenue seeks to enforce the Bulletin retroactively as well as prospectively. Such retroactive interpretation, which would reverse the long [054] continued publicly announced practice and letter rulings of the Department of Revenue, which interpretation can be deemed to have been approved by the State Legislature, would violate the Due Process and *ex post facto* law provisions, respectively Article II, § 2 and § 14 of the Illinois Constitution, as well as the principle against retroactive application of a changed administrative interpretation established by the Supreme Court in *Pressed Steel Car Co. v. Lyons*, 7 Ill. 2d 96, 105-6 (1955).

37. The retroactive application of the Bulletin of the Director of Revenue, as outlined in the preceding paragraph, also would violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

38. Plaintiff and all other members of the class to which it belongs are without an adequate remedy at law, because unless each of them complies with the regulation herein complained of, and pays an Illinois use tax on all fuel loaded aboard craft or vehicles in this State, they will severally be subjected to numerous actions instituted against them by the Department of Revenue through the Attorney General of Illinois. Moreover, those members of the class who do not directly file use tax returns and remit the use tax, but who have it collected from them by the retailer selling such fuel to them outside Illinois similarly have no adequate remedy at law.

WHEREFORE, plaintiff prays of this Court for and on behalf of itself and all other members of the class above described as follows:

[055] I. To grant forthwith a temporary writ of injunction directed to defendant Harry L. Hulman as Director of Revenue of the Department of Revenue of

the State of Illinois, his representatives and successors in office, and William G. Clark, his representatives and successors in office, enjoining each of them, until further order of this Court, from in any way, directly or indirectly, imposing, assessing (including making any final denial of a claim for credit or refund pursuant to an administrative proceeding instituted, as required by Section 2a of the Act of June 9, 1911, as amended, Ill. Rev. Stat. 1961, ch. 127, § 172, by a member of the class to which plaintiff belongs who paid the use tax under protest on the use of fuel within the scope of this litigation) or collecting or attempting to impose, assess or collect a use tax upon all fuel which, after being purchased outside Illinois and stored in Illinois by a common, contract, or private carrier by air, land, or water, is loaded in Illinois by such carrier aboard craft or vehicles to be used and consumed in propelling such craft or vehicles in interstate or foreign commerce, irrespective of whether such fuel actually is burned off within or outside the borders of Illinois;

II. To grant forthwith a temporary writ of [056] injunction directed to defendant Harry L. Hulman, as Director of Revenue of the Department of Revenue of the State of Illinois, his representatives and successors in office, enjoining each of them, until further order of this Court from turning over to the Treasurer of Illinois any moneys paid to defendant Hulman under protest as use tax by or on behalf of the plaintiff or any other member of the class (including payment under protest of use tax by a retailer who collected such tax from any member of the class) for fuel which, after being purchased outside Illinois and stored in Illinois, is loaded in Illinois by such carrier aboard craft or vehicles to be used and consumed in propelling such craft or vehicles in interstate or foreign commerce, except with notice to the Treasurer of Illinois that such moneys are to be segregated by the Treasurer of Illinois and placed by him in a Protest Fund pursuant to Sections 2a and 2a.1 of the Act of June 9, 1911, as amended, Ill. Rev. Stat. 1961, ch. 127, §§ 172, 172(a);

III. To grant forthwith a temporary writ of injunction directed to defendant William J. Scott, Treasurer of Illinois, his representatives and successors in office, enjoining each of them until further order of this Court, from placing any such moneys into the General Revenue Fund or in any fund other than a Protest Fund maintained by such defendant [057] for the purposes of this litigation;

IV. That in order to avoid a multiplicity of similar suits by members of the class to which the plaintiff belongs and for which the plaintiff is prosecuting this action, to forthwith grant a temporary writ of injunction against all other members of the class, as defined in paragraph 27, from litigating by any procedure before the Courts of this State against the State officers made defendants herein the substantive issues raised in this proceeding and diligently prosecuted by the plaintiff herein, provided that no person within this class (i) is prohibited from paying the use tax under protest and filing a complaint in chancery for a temporary injunction and a claim for refund or credit with the Director of Revenue pursuant to Section 2a of the Act of June 9, 1911, as amended, Ill. Rev. Stat., 1961, ch. 127, § 172, or (ii) from joining or intervening in this proceeding;

V. That, after full and complete hearing, to finally determine that the use tax sought be imposed, assessed and collected on fuel loaded in Illinois by common, contract or private carriers by air, land or water aboard craft vehicles to be used or consumed in propelling such craft or vehicles in interstate or foreign commerce is contrary to [058] the Use Tax Act and the Illinois Constitution, and/or the Federal Constitution as herein alleged;

VI. That after full and complete hearing to make permanent the temporary injunction orders set forth as I, II, and III;

VII. That, after full and complete hearing, resulting in a final determination in favor of the plaintiff and other members of the class pursuant to V. above,

to issue a writ of injunction to the defendant William J. Scott, as Treasurer of Illinois, ordering him to distribute such portion of the Protest Fund deemed to have been collected contrary to law to the plaintiff and other members of the class which are entitled to such refund in accordance with such conditions as the Court shall deem just and equitable;

VIII. To grant to the plaintiff and all other members of the class such other further relief as may be just and equitable to do complete and substantial justice.

UNITED AIR LINES, INC.  
Plaintiff

By .....  
H. Templeton Brown  
231 S. LaSalle Street  
Chicago 4, Illinois

By .....  
Mark H. Berens  
231 S. LaSalle Street  
Chicago 4, Illinois

MAYER, FRIEDLICH, SPIESS,  
TIERNEY, BROWN & PLATT  
231 South LaSalle Street  
Chicago 4, Illinois  
STate 2-0600  
Of Counsel

[059] STATE OF ILLINOIS }  
COUNTY OF COOK } ss.

C. F. McERLEAN, being first duly sworn, deposes and says that he is Senior Vice President - Law of United Air Lines, Inc., plaintiff herein, and makes this affidavit on its behalf, by and with its authority, that he has read the above and foregoing amended complaint, knows the contents thereof, and that the matters and things alleged therein are true, excepting the allegations contained in paragraphs 22 and 23 of the complaint, which allegations he is informed and believes are true and correct.

.....  
C. F. McErlean

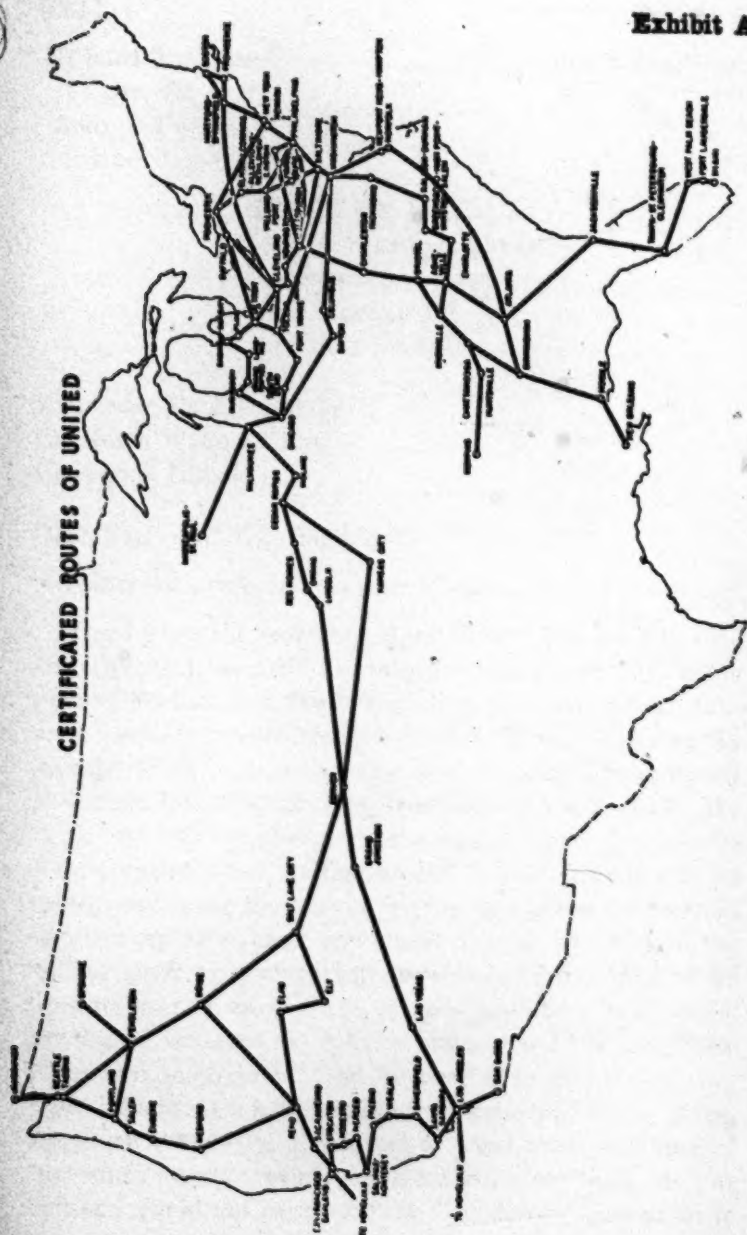
SUBSCRIBED AND SWORN TO  
before me this ... day  
of ....., 1963.

.....  
Notary Public



# Exhibit A

## CERTIFICATED ROUTES OF UNITED





[061]

**Exhibit B**

**Richard J. Lyons**  
**Director**

**Rules and Regulations**  
**Division**

**Andrew Fasscao**  
**Assistant Director**

**STATE OF ILLINOIS**  
**William G. Stratton, Governor**  
**DEPARTMENT OF REVENUE**  
**Springfield**  
**July 12, 1955**

**Honorable Paul J. Randolph**  
**155 North Wacker Drive**  
**Chicago 6, Illinois**

**Dear Representative Randolph:**

**This is with reference to your telephone call of yesterday.**

**If and when the Governor signs Senate Bill No. 510 (the Use Tax Act), we intend to interpret exemption (b), in the part of Section 3 of the law dealing with exemptions that are allowed to prevent multi-state taxation, as meaning the transportation vehicles of any kind of interstate company (railroad, bus line, air line, trucking company, etc.). We think that this broad sense is the way in which the General Assembly intended "rolling stock" in this situation to be interpreted since the reason for the exemption (to prevent taxation by more than one state) applies as much to the rolling stock or transportation vehicles of one kind of interstate carrier as to those of another, where such transportation vehicles or rolling stock move in interstate commerce so as to be used in more than one state. Any other interpretation restricting "rolling stock" to the transportation vehicles of a railroad or some other one kind of interstate carrier would be discriminatory and, in our opinion, would not carry out the Legislature's intention in**

adopting this exemption provision, and we believe the provision should be given a construction which makes it nondiscriminatory in effect when the provision is reasonably capable of such a construction. There is nothing in the provision which restricts its application to any particular kind of carrier except for "rolling stock" to be given its narrowest and most literal meaning, and we do not believe that this should be done when the result would obviously defeat the Legislature's purpose by causing discrimination. Equipment (not transportation vehicles), gasoline and other supplies would not qualify as "rolling stock" under any reasonable interpretation of that phrase and so would not come within the exemption provision under discussion. If such items which are not within the exemption are purchased outside Illinois by a carrier, and some of the items or units thereof (such as so many gallons of gasoline) are used in Illinois and some of the items or units thereof (such as so many gallons of gasoline) are used outside Illinois, the carrier would be liable for the use tax on the items used in Illinois, but not on the items used outside Illinois assuming that the carrier keeps adequate records to aggregate the nontaxable from the taxable items.

It should be pointed out that if a seller, when selling tangible personal property to the carrier for use, delivers the property from a point in Illinois to the purchasing carrier at a point in Illinois, the seller incurs retailers' occupation tax liability regardless of where the property may be used by the purchaser. This is just as true of rolling stock (transportation vehicles) as it is of gasoline and other kinds of tangible personal property. Please refer to paragraph 1 of subdivision II of Article 5 of the retailers' occupation tax Rules and Regulations, a copy of which is enclosed. Nothing in the Use Tax Act changes the Retailers' Occupation Tax Act.

Very truly yours,

Willard Ice

[062]

Exhibit C

August 26, 1955

Re: Your File 11-0—Illinois Use Tax

Phillips Petroleum Company

Bartlesville

Oklahoma

ATTENTION: Mr. F. H. Chichester, Director—Excise Tax  
Gentlemen:

Your letters of August 2 and 19, 1955, addressed to the Retailers' Occupation Tax Division, have been referred to this office for reply.

Since you are a "retailer maintaining a place of business in this State", you would be required to collect the use tax when shipping gasoline from a point outside Illinois to a purchaser like American Airlines in Illinois for use. In general, you cannot be relieved of your responsibility for collecting the use tax simply because the purchaser wishes to assume responsibility for paying the use tax directly to this Department. However, if the retailers' occupation tax does not apply to the transaction so that the only tax involved is the use tax, there is an exemption provision in the Use Tax Act for tangible personal property that is acquired outside Illinois and stored here temporarily, but then used exclusively outside Illinois. Where the purchaser is the kind that could use the tangible personal property in more than one state (such as an interstate airline or an interstate railroad) and the property is the kind that could be used in more than one state (such as fuel), and where such purchaser acquires the property from you outside Illinois under such circumstances that no tax but the use tax could be involved in the transaction, you will be relieved from collecting the use tax from the purchaser if the pur-



chaser certifies to you that the tangible personal property covered by the purchase order is to be stored temporarily in Illinois and then used outside Illinois. If the purchaser thereafter should happen to change its intention in this respect and use some of such tangible personal property in Illinois, the purchaser will be expected to pay the use tax thereon directly to this Department. In the type of case just described, you should retain the exemption certificate in question from the purchaser among your books and records in case of an audit by the Department.

Very truly yours,

Richard J. Lyons,  
Director of Revenue

By:

Willard Ice, Supervisor  
Rules and Regulations Division

WI:mh

cc. American Airlines

[063]

**Exhibit D****STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
Springfield**

**Theodore J. Isaacs**  
Director  
**Albert R. Imle**  
Assistant Director

**BULLETIN****Re: Temporary Storage of Motor Fuel Under Provisions  
of the Use Tax Act**

The purpose of this bulletin is to clarify the Department's position concerning the temporary storage provisions of the Use Tax Act and their relationship to fuel consumed by a common carrier.

The Department's position is that temporary storage ends and a taxable use occurs when the fuel is taken out of storage facilities and is placed into the tank of the airplane, railroad engine or truck. At this point, the fuel is converted into its ultimate use, and, therefore, a taxable use occurs in Illinois.

If a common carrier does not have separate facilities for transferring the fuel out of the State of Illinois but always puts it into the tank of the airplane, railroad engine or truck for final consumption, then they no longer will be able to give a certificate to the vendor stating that the fuel is purchased within the temporary storage provisions of the Use Tax Act, but must pay the use tax to their supplier.

**THEODORE J. ISAACS**  
**Theodore J. Isaacs**  
Director of Revenue

**Issued: June 3, 1963**

[065] STATE OF ILLINOIS }  
COUNTY OF COOK } ss.

## IN THE CIRCUIT COURT OF COOK COUNTY

**UNITED AIR LINES, INC.**

Plaintiff,

v.

**HARRY L. HULMAN**, Director of Revenue of the Department of Revenue of the State of Illinois, **WILLIAM G. CLARK**, Attorney General of the State of Illinois, **WILLIAM J. SCOTT**, Treasurer of the State of Illinois, and **SHELL OIL CO.**, a Delaware corporation,

Defendants.

63 C 17049

### MOTION FOR TEMPORARY INJUNCTION

Now comes United Air Lines, Inc., plaintiff, by its attorneys, and moves this Court to enter an order for temporary injunction in accordance with paragraph I of the Prayer of plaintiff's Amended Complaint in Chancery, said temporary injunction to be limited, however, to the following terms:

That defendant Theodore J. Isaacs, as Director of Revenue of the Department of Revenue of the State of Illinois, his representatives and successors in office, be, and they and each of them are hereby restrained, until further order of this Court, from in any way, directly or indirectly, imposing, assessing (including making any determination, [066] final or otherwise, of a claim for credit or refund pertaining to the use of fuel within the scope of this litigation and filed by plaintiff either (i) to recover use tax paid by plaintiff under protest or (ii) for use tax paid by plaintiff not under protest) or collecting or attempting to impose, assess or collect a use tax upon any fuel which, after being purchased by plaintiff outside Illinois and stored

in Illinois, is loaded by plaintiff in Illinois aboard aircraft to be used and consumed in propelling said aircraft in interstate or foreign commerce, irrespective of whether such fuel actually is burned off within or outside the borders of Illinois.

**UNITED AIR LINES, INC.**  
Plaintiff

By **MARK H. BERENS**  
Mark H. Berens

**WM. BRUCE HOFF, JR.**  
Wm. Bruce Hoff, Jr.  
Its Attorneys

Of Counsel:

**MAYER, FRIEDLICH, SPIESS,**  
**TIERNEY, BROWN & PLATT**  
231 South LaSalle Street  
Chicago 4, Illinois  
STate 2-0600

[068]

[Caption Omitted]

**ORDER FOR TEMPORARY INJUNCTION**

This cause coming on to be heard on the motion of United Air Lines, Inc., plaintiff, by its attorneys, for a temporary injunction under the general Chancery jurisdiction of this Court,

**IT IS ORDERED** that defendant Theodore J. Isaacs, as Director of Revenue of the Department of Revenue of the State of Illinois, his representatives and successors in office, be, and they and each of them are hereby restrained, until further order of this Court, from in any way, directly or indirectly, imposing, assessing (including making any determination, final or otherwise, of a claim for credit or refund pertaining to the use of fuel within the scope of this litigation.

tion and filed by plaintiff either (i) to recover use tax paid by plaintiff under protest or (ii) for use tax paid by plaintiff not under protest) or collecting or attempting to impose, assess or collect a use tax upon any fuel which, after being [069] purchased by plaintiff outside Illinois and stored in Illinois, was loaded prior to June 3, 1963, by plaintiff in Illinois, aboard aircraft to be used and consumed in propelling said aircraft in interstate or foreign commerce, irrespective of whether such fuel actually was burned off within or outside the borders of Illinois.

IT IS FURTHER ORDERED that the manner and extent to which plaintiff shall furnish indemnification covering said temporary injunction shall be determined and agreed upon between the attorneys for plaintiff and the attorneys for defendant.

IT IS FURTHER ORDERED that plaintiff's motion for an injunction under the general Chancery jurisdiction of this Court is denied as to the period between June 3, 1963 and August 1, 1963.

IT IS FURTHER ORDERED that plaintiff's motion for an injunction under the general Chancery jurisdiction of this Court is denied as to all periods subsequent to August 1, 1963.

DATED: December 13th, 1963.

William V. Brothers  
Judge

[071]

[Caption Omitted]

**ANSWER**

Now comes SHELL OIL COMPANY, a Delaware corporation, one of the defendants herein, by PETERSON, LOWRY, BALL, BARBER & ROSS, its attorneys, and for its Answer states as follows:

2, 3, 4, 4A, 14A, 22 and 23. Defendant admits the matters and allegations contained in paragraphs 2, 3, 4, 4A, 14A, 22 and 23.

Further answering, defendant states that as to the remaining allegations and matters contained in all other paragraphs, it is without information or facts sufficient to form an opinion or belief.

WHEREFORE, SHELL OIL COMPANY, a corporation, one of the defendants, herein, prays that the plaintiff's complaint should be dismissed as against the defendant, SHELL OIL COMPANY.

PETERSON, LOWRY, RALL,  
BARBER & ROSS

By: OWEN RALL

*Attorneys for Defendant*

PETERSON, LOWRY, RALL, BARBER & ROSS  
135 South LaSalle Street  
Chicago 3, Illinois  
ANdover 3-7300

[072] [Certificate of Service Omitted in Printing]

[074] [Caption Omitted]

### **ANSWER**

Now come the defendants, Harry L. Hulman, Successor Director of the Department of Revenue of the State of Illinois, and William G. Clark, Attorney General of the State of Illinois, by William G. Clark, Attorney General of the State of Illinois, their attorney, and for their joint answer to the complaint amended herein, they and each of them say:



1. Admit the allegations of fact of Paragraphs one, two, three and four of plaintiff's complaint as amended;

2. Deny the allegation of Paragraph five and assert that plaintiff's complaint represents an improper attempt as a class action and wrongfully assumes a common interest in questions of law and fact necessary in such actions;

3. Deny the allegations of Paragraph six of said complaint and state that plaintiff has waived any right or privilege to [075] proceed under the *Owens-Illinois Glass Company, vs. McGibbin*, decision by pursuing the remedies provided under Illinois Revised Statutes, 1961, Ch. 127, Secs. 172, 172(a);

4. Admit the allegation of Paragraph seven of said Complaint;

5. That they have no knowledge sufficient to form a belief as to the truth or correctness of the allegations contained in Paragraphs eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen and twenty of said complaint and therefore neither admit nor deny but demand strict proof thereof;

6. Admit the existence of correspondence from time to time by employees of the Department of Revenue but deny the conclusions and opinions of plaintiff relating to such correspondence as alleged in Paragraph twenty-one of said complaint. If as plaintiff alleges the existence of a prior administrative policy or practice exempting such transactions, such policy or practice, if erroneous can not inure to the benefit of plaintiff. Defendants further deny that either of the exhibits attached to and made a part of the complaint support any such allegation of any ruling by the Director of Revenue with respect to the transactions in question;

7. Deny that any interpretation of the transactions herein involved by the auditors of the Department of Reve-

nue has any binding effect on the issue raised in the complaint. Defendants further deny any official ruling exempting the matter in controversy as alleged in Paragraph twenty-two of said complaint;

[076] 8. That they have no knowledge sufficient to form a belief of the allegations contained in Paragraph twenty-three and neither admit nor deny, but demand strict proof thereof;

9. That they have no knowledge sufficient to form a belief as to the truth or correctness of the reliance placed by plaintiff on any matter relating to the Use Tax in question as alleged in Paragraph twenty-four and these defendants state that the remaining allegations of fact contained in said paragraph, which are descriptive of plaintiff's transactions, clearly disclose that the plaintiff is engaged in a taxable use and that said plaintiff has not paid to any of these defendants the tax provided by the Use Tax Act upon and with reference to the matters set forth in the said complaint, at the rate or the amount prescribed by said Statute;

10. Admit the issuance of the Bulletin as alleged in Paragraph twenty-five, and a copy of said Bulletin is attached hereto and made a part of this Answer;

11. Paragraph twenty-six states various conclusions that the defendants deny;

12. Paragraph twenty-seven states various conclusions of the pleader and the Bulletin issued on June 3, 1963, and the Use Tax Act, are the best source to determine what is asserted or attempted to be asserted as the same apply to plaintiff;

13. Paragraphs twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four and [077] thirty-five state various conclusions and opinions of

the plaintiff that these defendants deny, the same being legal conclusions of plaintiff;

14. Deny the allegations of Paragraphs thirty-six and thirty-seven, the same being legal conclusions and opinions of plaintiff. Defendants assert that within the meaning of the Use Tax Act, the Bulletin issued on June 3, 1963, clearly stated that "the purpose of this Bulletin is to clarify the Department's position. . . ." and said Bulletin did not in any manner alter or change existing law. Nor did said Bulletin recognize or admit that plaintiff was excluded or exempt from the operation of the Use Tax Act with reference to the transactions set forth in the said complaint;

15. That notwithstanding the plaintiff's assertion to the contrary, The Use Tax Act, as amended, is in all respects valid and constitutional as are the regulations and Bulletins of the Department of Revenue as promulgated under that Act and as are the actions of the defendants which this suit seeks to enjoin. More particularly neither the Use Tax Act nor any regulation or Bulletin of the Department of Revenue, nor any action of the defendants in enforcing that Act violate the Use Tax Act or Article I, Section 1, Article II, Section 2 and 14, and Article IV, Section 13, of the Constitution of the State of Illinois. Nor does the Act, Regulations or Bulletins violate Article I, Section 8 or 10, or the 14th Amendment to the Constitution of the United States;

16. That plaintiff has a full and adequate remedy at law for the determination of its tax liability under the Use Tax Act, [078] 1961 Illinois Revised Statutes, Ch. 120, Pars. 439.1 to 439.22, such legal remedy and the procedure to be followed having been specifically provided for by and contained within, the terms and provisions of said aforementioned Act. Plaintiff also has a full and complete statutory remedy provided in Section 2(a) of "An Act in relation to the payment and disposition of monies received for and

on behalf of the State", approved June 9, 1911, as amended by Act approved May 15, 1961, 1961 Illinois Revised Statutes, Ch. 127, Sec. 172;

17. That plaintiff's complaint is insubstantial and insufficient and fails to state a cause of action to permit a Court of Equity to take jurisdiction;

18. The construction of the Use Tax which results in the imposition of the Use Tax on plaintiff's transactions described in the complaint filed herein is a proper construction and interpretation of said Act.

WHEREFORE, the defendants pray that plaintiff's complaint be dismissed for want of equity, the injunction heretofore entered be dissolved and vacated, judgment be entered in favor of defendants, and that these defendants may have such other and further relief in the premises as shall be just and equitable.

HARRY L. HULMAN, Director of Revenue  
of the Department of Revenue of the State  
of Illinois

by: WILLIAM G. CLARK  
William G. Clark, Attorney General  
of the State of Illinois  
Attorney for the defendants

[079]

[Jurat Omitted in Printing]

[080]

State of Illinois  
**DEPARTMENT OF REVENUE**  
Springfield

**Theodore J. Isaacs**  
Director

**Albert R. Imle**  
Assistant Director

**BULLETIN****RE: TEMPORARY STORAGE OF MOTOR FUEL  
UNDER PROVISIONS OF THE USE TAX ACT**

The purpose of this bulletin is to clarify the Department's position concerning the temporary storage provisions of the Use Tax Act and their relationship to fuel consumed by a common carrier.

The Department's position is that temporary storage ends and a taxable use occurs when the fuel is taken out of storage facilities and is placed into the tank of the airplane, railroad engine or truck. At this point, the fuel is converted into its ultimate use, and, therefore, a taxable use occurs in Illinois.

If a common carrier does not have separate facilities for transferring the fuel out of the State of Illinois but always puts it into the tank of the airplane, railroad engine or truck for final consumption, then they no longer will be able to give a certificate to the vendor stating that the fuel is purchased within the temporary storage provisions of the Use Tax Act, but must pay the use tax to their supplier.

**THEODORE J. ISAACS**  
Theodore J. Isaacs  
Director of Revenue

**Issued: June 3, 1963**



[098]

[Caption omitted]

**STIPULATION**

It is hereby stipulated and agreed between United Air Lines, Inc., plaintiff, and Marshall Korshak, Director of Revenue of the Department of Revenue of the State of Illinois, William G. Clark, Attorney General of the State of Illinois, and Shell Oil Company, defendants, that:

1. United Air Lines, Inc. ("United") is a Delaware corporation qualified to do business in the State of Illinois, and is engaged in the business of transporting persons, property and United States Mail by air on scheduled and chartered flights in interstate and foreign commerce.<sup>1</sup> Until its merger into United on June 1, 1961, Capital Airlines, Inc. ("Capital") was also a Delaware corporation qualified to do business in the State of Illinois, and was engaged in the business of transporting persons, property and United States mail by air on scheduled and chartered flights in interstate commerce.<sup>2</sup>

2. All such scheduled and chartered flights are made pursuant to Certificates of Public Convenience and Necessity, conferring authority to fly particular routes and issued to United by the Civil Aeronautics Board, and pursuant to Operating Certificates and Operations Specifications prescribing the manner in which aircraft are to be flown over those routes and issued to United by the Federal Aviation Agency. All such Certificates and Specifications are issued under authority of the Federal Aviation Act of 1958, as amended (49 U.S.C. §§ 1301 *et seq.*).

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<sup>1</sup> United also provides scheduled intrastate service within various states, including, in Illinois, a limited number of flights between Chicago and Quad-Cities Airport, Moline. United has also performed a few charter flights between points within Illinois. United, however, pays Illinois Use Tax on fuel consumed on such intrastate flights (see footnote 6, below), and this lawsuit therefore involves only United's interstate and foreign operations.

<sup>2</sup> Capital provided no intrastate service in Illinois.



United's scheduled service is presently provided over a route system extending, via numerous intermediate points from the East to the West coasts and Hawaii, north and south along both the Atlantic and Pacific seaboard and, generally, north and south from the Middle Atlantic and New England states to the Gulf of Mexico.<sup>3</sup>

This route system consists of 17,420 unduplicated route miles, of which only 256 route miles, or less than 1.6% are within Illinois. It includes service on interstate and foreign flights to 110 cities in 32 states, the District of Columbia and Canada.

United presently provides scheduled interstate service from O'Hare and Midway airports in Chicago to 55 cities in 20 states and the District of Columbia. Such service involves an average of approximately 4,580 departing flights per month, more than half of which are continuations of interstate flights that both begin and end outside Illinois and on which Chicago is a stopover point.

United also performs an average of approximately 21 monthly charter flights in interstate and foreign commerce between Chicago and various points in the United States and Canada.<sup>4</sup>

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<sup>3</sup> A summary map showing United's principal certificated routes is attached to United's Amended Complaint as Exhibit A. A detailed map showing all of United's certificated routes is attached to this Stipulation as Appendix 1.

<sup>4</sup> The information and average figures given in this paragraph and elsewhere in this Stipulation and Appendix 2 are based on United's operations during 1964. Average figures for prior years would run generally but not substantially lower, and, except for some duplication of routes, the description of United's present operations is a generally accurate description of the total of United's and Capital's separate operations prior to the merger. Of the present average of 4,580 scheduled departures per month, approximately 60 (2 daily) are from Midway; the remainder are from O'Hare. Prior to the temporary discontinuance of service from Midway in July, 1962, a much higher percentage of flights departed from Midway. United did not operate from Midway between July 9, 1962 and July 5, 1964.

3. Because United's operations are under Federal authorization of the Certificates of Public Convenience and Necessity, Operating Certificate and Operations Specifications referred to in Paragraph 2, United's interstate and foreign operations are regulated and controlled by various agencies and instrumentalities of the Federal government. Among other things:

United's tariffs (fares, rates and terms and conditions of carriage) are filed with and subject to the approval of the Civil Aeronautics Board.

Under the Federal Aviation Act, United is required to provide regularly scheduled service over all portions of its route system unless specifically authorized to suspend such service by the Civil Aeronautics Board, and is required to file all its schedules with the Civil Aeronautics Board and the United States Post Office Department. (14 Code of Federal Regulations, Part 231 (1964).)

Under the Federal Aviation Act (49 U.S.C. § 1375), the Post Office Department has extensive authority to require airlines, such as United, to affirmatively establish schedules which meet the needs of the Post Office Department; conversely, the Post Office Department has a veto power over proposed schedule changes which would adversely affect its postal operations. Approximately 99.5% of United's flights from O'Hare and Midway Airports are operated according to such schedules.

Scheduled air carriers, such as United, are required to perform their established schedules, unless good cause, such as weather conditions or equipment difficulties, is shown. To that end, the Civil Aeronautics Board regularly monitors the scheduled performance of all airlines, including United. (14 C.F.R. Part 234 (1964).)

Pursuant to the Federal Aviation Act, the Federal Aviation Agency has established a national air traffic control system whereby the actual routes between airports of all commercial aircraft are fixed. Under such control, no United aircraft may depart from O'Hare or Midway until its flight plan has been approved by the Federal Aviation Agency officer in charge, and the course and altitude of aircraft are assigned throughout all flights. Subject to certain exceptions near busy airports, the routings are on fixed courses which are much like aerial highways.

Such routes, as they apply to a given route segment to be flown and as assigned by the federal air traffic control authorities, must be followed by aircraft proceeding in accordance with instrument flight rules promulgated by the Federal Aviation Agency. To comply with its federally issued Operations Specifications (14 C.F.R. § 40.18 (1964)), United must conduct all of its turbojet flights in accordance with instrument flight rules (except in terminal areas when in radio contact with air traffic control) and, consequently, along designated air space routes unless radar vectored elsewhere by air traffic control. As a matter of policy, United conducts all of its flights (turbojet, turboprop and piston aircraft) enroute in accordance with instrument flight rules and along designated air space routes. While operating under instrument flight rules aircraft are controlled as to routing, altitude and airspeed by the air traffic control function of the Federal Aviation Agency. Normally, flights to given destinations are assigned the same routings day after day.

Federal Aviation Agency regulations (14 C.F.R. §§ 42a, 52 (1964)) require that all commercial aircraft, including those of United, carry a minimum specified amount of reserve fuel over and above that required to carry the particular aircraft to its scheduled destination. Such regulations

also require, that, where it is uncertain if weather conditions at the scheduled destination will permit landing, additional fuel necessary to take the aircraft from the scheduled destination to a specified alternate destination must be carried.<sup>5</sup> (14 C.F.R. §§ 42a, 52 (1964).)

United must submit to the Federal Aviation Agency for its ratification Flight Manuals for each type of aircraft operated by it. Among other things, such Flight Manuals must specify: engine power settings for all phases of flight, including run-up (for piston aircraft), take-off, climb and cruise; detailed fuel consumption data for all operating conditions, in terms of weather conditions, loaded weight of aircraft and engine power settings during all phases of flight; equipment and instrument check-out procedures; various additional take-off, landing and other flight procedures.

4. All of United's flights are made with aircraft which were purchased or leased by, and delivered to, United outside Illinois and which include fuel storage tanks as integral parts thereof. These tanks are for the storage of fuel prior to the time it is pumped from such tanks through a system of fuel lines into the aircraft engines and there burned in taxiing, take-off, and flight.

5. All of the fuel involved in this litigation is consumed in the interstate and foreign commerce described in the foregoing paragraphs.<sup>6</sup>

<sup>5</sup> Reserve fuel requirements and the manner in which basic fuel requirements are computed are described in paragraph 10 and Appendix 2.

<sup>6</sup> United pays Illinois Use Tax on fuel purchased in Illinois, as well as on fuel consumed on intrastate flights in Illinois, including:

- (a) flights originating in Chicago and terminating at Moline;
- (b) training flights which both depart from and return to Illinois; and
- (c) charter flights between points within Illinois.

6. All such fuel (aviation gasoline for piston aircraft and kerosene for turboprop and jet aircraft) is purchased by United from Shell Oil Company, and is delivered to United, with possession, title and all risk of loss passing to United, either at Hammond, Indiana or at East Chicago, Indiana.<sup>7</sup>

7. All such fuel is thereafter transported by pipeline or tank trucks, by common carriers under contract to United, normally on a daily basis, to ground fuel storage facilities located within Illinois, on or near O'Hare or Midway Airports in Chicago, where it is stored prior to being transferred to the fuel storage tanks of aircraft. The period of storage in such ground fuel storage facilities ranges from a minimum of two days (during which period jet fuel is processed to eliminate impurities) to a maximum of twelve days. The average period of storage ranges, depending on the type of fuel and storage facilities involved, from two and a half to six days.

8. All such fuel is transferred from the ground fuel storage facilities at O'Hare and Midway Airports into the fuel storage tanks of aircraft either by fueling trucks or directly through underground pipes and flexible hoses. Such transfers are made on an average of more than 150 times a day. With insignificant exceptions, all such transfers are made into the fuel storage tanks of aircraft immediately prior to departure, and the fuel so transferred remains in such fuel storage tanks in an unchanged condition until it is pumped through a system of fuel lines into the engines of the aircraft and there burned in taxiing, take-off, and flight. On stopover flights, unused fuel remains stored in the fuel tanks of the aircraft until aircraft is again flown.<sup>8</sup>

<sup>7</sup> Such purchases and deliveries of fuel have been made under the same arrangement since May 1, 1953.

<sup>8</sup> Occasionally, fuel is removed from the aircraft and replaced in ground fuel storage facilities. In an extremely small number of instances, it may be dumped in flight.



9. By virtue of the control and supervision of the Civil Aeronautics Board and Post Office Department as described in Paragraph 3, and as a matter of commercial, or "competitive," necessity, United is required, weather and condition of equipment permitting, to perform all flights as scheduled.<sup>9</sup> United also is under contract to its passengers and cargo customers to perform all scheduled and chartered flights. In order to perform these regulatory and contractual obligations, United is committed to transport fuel in its aircraft to points outside Illinois.

10. As stated in Paragraph 3, Federal Aviation Agency regulations (14 C.F.R. §§ 42a, 52 (1964)) require that certain fuel load computation procedures be made for every commercial flight. Included in those regulations is the requirement that all commercial aircraft, including those of United, carry a minimum specified amount of reserve fuel. In addition, and as a further safety factor, United's Flight Manuals, filed with and ratified by the Federal Aviation Agency, include requirements that all of its aircraft carry amounts of reserve fuel in excess of those required by Federal Aviation Agency regulation.<sup>10</sup> Accordingly, after the United pilot and the dispatcher at the particular airport have taken into account all of the elements which might affect fuel consumption on a particular flight, such as weight of the aircraft as loaded and weather conditions along the assigned route, and, where weather conditions indicate that a landing at the intended destination may not be possible, have computed the amount of fuel necessary to take the particular aircraft to a specified alternate destination, they must add the specified Federal Aviation Agency

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<sup>9</sup> During the first nine months of 1964, United performed roughly 99% of its scheduled departures from O'Hare and Midway Airports.

<sup>10</sup> Reserve fuel requirements for each type of aircraft operated by United are shown on the table attached to this Stipulation as Appendix 2.



and United Flight Manual reserve fuel requirement to the figure so calculated.<sup>11</sup>

11. As a result of the fuel requirements and procedures described above, coupled with the rigid control of all of United's flight routes by the Federal Aviation Agency as outlined in paragraph 3: (a) approximately 99.75% of United's incoming flights arrive at O'Hare and Midway Airports with fuel aboard equal to or exceeding the reserve requirements imposed directly by the Federal Aviation Agency regulations; (b) approximately 99% of United's incoming flights arrive at O'Hare and Midway Airports with fuel aboard equal to or exceeding the combined reserve requirements imposed by the Federal Aviation Agency regulations and by United's Flight Manuals; (c) all of United's flights departing from O'Hare and Midway Airports arrive at such airports with enough fuel on board to take them beyond the borders of Illinois on the actual route they follow on the outbound leg of their journey; and (d) if the only fuel aboard arriving aircraft were the combined fuel reserve requirements of the Federal Aviation Agency and United's Flight Manuals, 99.3% of United's flights departing from O'Hare and Midway Airports would have arrived with sufficient fuel aboard to take them beyond the borders of Illinois on the actual route they follow on the outbound leg of their journey.<sup>12</sup>

<sup>11</sup> Fuel is added to that already on board the aircraft to meet the amount specified by the pilot and dispatcher. If the pilot's and the dispatcher's requirements vary, the larger quantity of fuel is loaded. To illustrate the amount of additional fuel carried for alternative destinations, alternate destinations for four engine jet aircraft destined for Chicago, and the amount of additional fuel required for such destinations, respectively are Milwaukee, 6,000 lbs.; Detroit, 11,000 lbs.; Cleveland, 13,000 lbs.; Minneapolis/St. Paul, 16,000 lbs.; and Omaha, 18,000 lbs.

<sup>12</sup> Average figures for fuel on board, fuel loaded and fuel "burned-off" in reaching the Illinois border for various types of aircraft operated by United are shown on the table attached to this Stipulation as Appendix 2.

12. As a further result of the Federal Aviation Agency regulations and United Flight Manual requirements described above, no United aircraft departs from O'Hare and Midway Airports without a minimum dispatch load of fuel on board.<sup>18</sup>

13. From the effective date of the Illinois Use Tax in 1955 through June 3, 1963, United paid the Illinois Use Tax upon the fuel loaded aboard aircraft in Illinois that was actually consumed ("burned-off") in or over Illinois. In addition, since May 1, 1953, Shell Oil Company has collected from United the Indiana Gross Income Tax measured by the purchase price of such fuel paid by United to Shell Oil Company. Since June, 1963, the applicable rate of the Indiana Gross Income Tax has been  $\frac{1}{2}$  of 1 per cent. Apart from this, United incurs no State sales, use or similar tax on fuel loaded aboard aircraft in Illinois.

14. The parties have reviewed the documents, charts, surveys, statistical computations and other data supporting the facts set forth in this Stipulation. Except as otherwise specifically indicated, it is understood that statements of present fact have been true continuously from January 1, 1960, and were true of Capital's position and operations prior to its merger into United on June 1, 1961. It is further understood that Appendices 1 and 2 hereto, as well as Exhibits A and D to United's Complaint, referred to herein, are part of this Stipulation.

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<sup>18</sup> Minimum dispatch loads for each type of aircraft operated by United (in all cases more than twice that required to carry the aircraft beyond the Illinois border) are set forth in the table attached to this Stipulation as Appendix 2.

It is further stipulated and agreed that all of the parties hereto shall have the right to offer additional evidence on any matter relevant to the subject matter of this litigation.

UNITED AIRLINES, INC.

/s/ WM. BRUCE HOFF, JR.

MARSHALL KORSHAK, Director of Revenue of the Department of Revenue of the State of Illinois

/s/ MARSHALL KORSHAK

WILLIAM G. CLARK, Attorney General of the State of Illinois

/s/ WILLIAM G. CLARK

SHELL OIL COMPANY  
Peterson, Lowry, Ball,  
Barber & Ross

/s/ OWEN BALL

• • •

Appendix 1 to Stipulation introduced in essentially identical form as United Exhibit 5, Reproduced at page 230, *infra*.

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Type of Aircraft	Engine Type	Amount Required by FAA (pounds) <sup>15</sup>	Additional Amount Required by FAA <sup>16</sup>	Total Reserve Fuel (pounds)	Minimum Dispatch Load (pounds)	Average Fuel on Board Arriving Flights (pounds)	Average Fuel Loaded (pounds)	Average Outbound Fuel on Board (pounds)	Fuel Burn-off to Illinois Border (pounds)
General Dynamics Convair-340	2 engine piston	700	500	1,200	1,200				
Douglas DC-6A/6B	4 engine piston	1,350	1,000	2,350	7,680				
Douglas DC-7/7B	4 engine piston	1,890	1,000	2,890	7,550				
Vickers Armstrongs Viscount	4 engine turbo-prop	2,200	1,000	3,200	3,200				
Sud Aviation Caravelle	2 engine jet	4,000	2,000	6,000	8,500	13,350	14,550	27,900	4,200
Boeing-727	3 engine jet	5,400	2,700	8,100	12,000	18,350	15,350	33,700	5,600
Boeing-720	4 engine jet	8,000	4,000	12,000	18,000	23,600	28,600	52,200	8,700
Douglas DC-8 (JT3C-6 engine)	4 engine jet	8,000	4,000	12,000	26,000	25,400	34,100	59,500	8,400
Douglas DC-8 (JT4 engine)	4 engine jet	8,500	4,000	12,500	26,000				
Douglas DC-8 (JT3D-1 engine)	4 engine jet	8,000	4,000	12,000	26,000				
Douglas DC-8F (JT3D-3)	4 engine (cargo)	8,000	4,000	12,000	26,000				

Midway during the periods in which the information reflected in these columns was collected. However, the same basic operating conditions are applicable to both airports.

<sup>15</sup> Precise burn-off figures are now available for only west and northwest bound flights. Accordingly, since eastbound flights involve only a few miles inside Illinois, average figures for all flights would be significantly smaller than the average shown in this column. United has no southbound departure routes from O'Hare or Midway.

<sup>16</sup> See paragraph 10 of the Stipulation.

<sup>15</sup> One gallon of turbine fuel (for turbo-prop and jet engines) equals approximately 6.8 pounds and one gallon of aviation gasoline (for piston engines) equals approximately 6 pounds.

<sup>16</sup> See paragraph 12 of the Stipulation.

<sup>17</sup> Average fuel figures for arriving and departing flights are not now available for piston or turbo-prop aircraft or for certain jet aircraft. United was not operating out of

[Caption Omitted]

[146]      **ADDITIONAL STIPULATION**

It is hereby stipulated and agreed between United Air Lines, Inc., plaintiff, and Theodore A. Jones, Director of Revenue of the Department of Revenue of the State of Illinois, William G. Clark, Attorney General of the State of Illinois, and Shell Oil Company, defendants, that:

1. From August, 1955 when the Use Tax Act was enacted to June 3, 1963, the Department of Revenue uniformly and consistently interpreted and applied the Illinois Use Tax Act to fuel purchased outside Illinois by interstate airlines and railroads, brought into the State and stored here by them prior to the use of such fuel by them in propelling aircraft and trains in interstate commerce so that only that portion of the fuel actually consumed ("burned off") in or over Illinois was subjected to the Illinois Use Tax.

2. In reliance upon the facts stated in paragraph 1, numerous railroads and airlines (that purchased fuel outside the State of Illinois, caused it to be brought into Illinois and temporarily stored here before use in interstate movements of aircraft and trains) computed and paid Illinois Use Tax according to burn-off formulas.

3. Pursuant to this interpretation, United computed and paid its Illinois Use Tax on fuel loaded at Midway and O'Hare Airports in Chicago from August 1955 to June 1963 on a burn-off basis. Payments of Illinois Use Tax on aircraft fuel on this burn-off basis for the period July 1, 1959 through December 31, 1962, were audited by the Department of Revenue and approved by it subject to minor computational adjustments.

The facts herein stipulated are in addition to those set forth in the Stipulation between the parties filed with this Court on January 19, 1966.



It is further stipulated and agreed that all of the parties hereto shall have the right to offer additional evidence on any matter relevant to the subject matter of this litigation.

**UNITED AIR LINES, INC.**

By /s/ MARK H. BERENS

**THEODORE A. JONES, Di-  
rector of Revenue of the De-  
partment of Revenue of the  
State of Illinois**

By /s/ THEODORE A. JONES

**WILLIAM G. CLARK, Attor-  
ney General of the State of  
Illinois**

By /s/ WILLIAM G. CLARK

**SHELL OIL COMPANY**

By PETERSON, LOWRY, RALL,  
BARBER & ROSS

By /s/ OWEN RALL



[149] [Caption Omitted]

**AMENDED ANSWER**

Now comes SHELL OIL COMPANY, a Delaware Corporation, one of the defendants herein, by Peterson, Lowry, Rall, Barber & Ross, its attorneys, by leave of court first had and obtained, and for its Amended Answer to the Amended Complaint heretofore filed by United Air Lines, Inc., states as follows:

2, 3, 4, 4A, 14, 14A, 15, 22 and 23. Defendant admits the matters and allegations contained in paragraphs 2, 3, 4, 4A, 14, 14A, 15, 22 and 23.

Further answering, defendant states that as to the remaining allegations and matters contained in all other paragraphs, it is without information or facts sufficient to form an opinion or belief.

WHEREFORE, SHELL OIL COMPANY, a corporation, one of the defendants herein, prays that the plaintiff's complaint should be dismissed as against the defendant, SHELL OIL COMPANY.

PETERSON, LOWRY, RALL,  
BARBER & ROSS

By OWEN RALL  
Attorneys for Defendant

PETERSON, LOWRY, RALL, BARBER & ROSS  
135 South LaSalle Street  
Chicago, Illinois 60603  
ANdover 3-7300,

Attorneys for SHELL OIL COMPANY, Defendant

[151]

[Caption Omitted]

**ORDER OF PERMANENT INJUNCTION**

This cause coming on to be heard on the motion of United Air Lines, Inc., plaintiff, by its attorneys, the Court being advised by the Attorney General as the attorney for the defendant, Theodore A. Jones, Director of Revenue of the Department of Revenue of the State of Illinois, that all Notices of Proposed Assessments, if any, relating to fuel loaded into plaintiff's aircraft in Illinois during the period prior to July 1, 1963, will be withdrawn and that the Department of Revenue has abandoned its claim with respect to such fuel for said period, and the Court being further advised by the attorneys for plaintiff that plaintiff will withdraw its claim for credit (aggregating \$49,020.15) for the use tax paid during said period,

IT IS ORDERED that Theodore A. Jones, Director of Revenue of the Department of Revenue of the State of Illinois, his representatives and successors in office, be, and they [152] and each of them are hereby permanently restrained from in any way, directly or indirectly, imposing, assessing or collecting or attempting to impose, assess or collect a use tax upon any fuel loaded into plaintiff's aircraft in Illinois during the period prior to July 1, 1963.

DATED: February 14, 1968

Thomas Donovan  
Judge

[154]

[Caption Omitted]

**ANSWER TO AMENDED COMPLAINT**

Now comes Theodore A. Jones, Successor Director of Revenue of the Department of Revenue of the State of Illinois, and WILLIAM G. CLARK, Attorney General of the State of Illinois, by WILLIAM G. CLARK, Attorney General of the State of Illinois, their attorney, and for their supplemental joint answer to the amended complaint herein, they and each of them say:

4A: Admit the allegations of paragraph 4A of said amended complaint.

14A: Admit that part of the allegations contained in paragraph 14A wherein it is stated that Shell Oil was the seller of the fuel during the applicable period involved. Defendants deny the remaining allegations as conclusions of Plaintiff.

**WILLIAM G. CLARK, Attorney  
General of the State of Illinois  
Attorney for the Defendants.**

[155] [Jurat Omitted in Printing]

**REPORT OF PROCEEDINGS**

[2] **MR. BERENS:** We are ready for trial today, Your Honor, but before that, we've got a couple of preliminary matters. Here is an agreed order for permanent injunction on the so-called past period that is running from January 1, 1960, through June 30, 1963.

For your recollection, that is not in protest fund.

**THE COURT:** I understand.

**MR. BERENS:** The temporary injunction was against any assessment—

**THE COURT:** Pending the outcome of this litigation, there will be a fund available.

**MR. BERENS:** Yes, for the so-called current period, which is all that remains in the case after you have [3] signed that order and which is in the protest fund.

**MR. CAMPBELL:** I would like to explain to the Court the basis for this order. The taxpayer raised in Paragraph 36 of their complaint, as amended, the question of the retroactive application of the bulletin, which was issued by the Director of Revenue on June 3, 1963. And in order to avoid that problem and because of the *Pressed Steel Car* case, the Department has decided not to assert the tax claim for the period prior to the date mentioned in the order and that is the reason for the order.

So we have no objection to the entry of the order.

**THE COURT:** All right.

[5] **MR. BERENS:** As I stated a moment ago, Your Honor, United Air Lines is ready for trial. And if it please the Court, I would like to make a brief opening statement—

**THE COURT:** Please do.

**MR. BERENS:** —to refresh everyone's memory of the issues.

**THE COURT:** Please proceed.

**MR. BERENS:** The order that you just entered took the past period out of the case. So the issue and the liability, if any, for use tax in this matter starts July 1, 1963, and continues up to the present.

We have before the Court as part of the relief requested a motion for permanent injunction against assessment for the present period and there is a protest fund injunction that has been issued by the Court. And the amount in controversy up to the current date is in the protest fund with the State Treasurer.

**THE COURT:** Is this prior to July 1, '63?

**MR. BERENS:** No, that commences as of July 1, '63, Your Honor.

[20] **MR. HOFF:** Exhibit No. 3 is the bulletin that has caused all the troubles here. June 3, 1963, bulletin signed by Theodore J. Isaacs, Director of Revenue.

[22] **WILLIAM LOUIS MOORE, JR.**

was called as a witness herein, having been first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

**BY MR. HOFF:**

**Q.** Would you state your name, please?

**A.** William Louis Moore, Jr.

**THE COURT:** M-o-o-r-e?

**THE WITNESS:** M-o-o-r-e, yes, sir.

**MR. HOFF:** **Q.** Where do you live, Mr. Moore?

**A.** I live at 350 Forest Road, Hinsdale, Illinois.

**Q.** And by whom are you employed?

**A.** By United Air Lines.

**Q.** Very briefly, Mr. Moore, would you outline the history of your employment with United?



A. I was employed in January, 1940. I worked for two years on the West Coast in the Reservations Department.

I went into military service, January, '42; returned to United Air Lines in March of '46.

Since that time, I have been in the Schedule Planning Department, and I am now Director [23] of Schedule Planning for United.

Q. What are the responsibilities of the Schedule Planning Department of United, Mr. Moore?

A. To plan and coordinate them internally, all of United schedules, systems schedules for passengers and cargo.

Q. Does the responsibility of that department include arranging for technical facilities and aircraft?

A. Not for technical facilities in aircraft.

Q. I meant to say and aircraft.

A. Indirectly, yes, we—

Q. In what way, please?

A. We are involved almost continually in the planning for the numbers and types of equipment that United will order, the facilities that we will build at various airports.

Q. All right.

MR. CAMPBELL: Your Honor, if I may just make a statement here, I don't know what the witness intends to testify to, but certainly we stipulate that United Air Lines is an airline, and, of course, they have scheduled flights.

[24] I don't know if we can shorten the hearing in so far as the technical aspects or the operational aspects, but we are willing to agree, of course, that they are an airline and that they do maintain schedules as well as, I suppose, unscheduled flights. If this will facilitate the—

MR. HOFF: I think this witness is going to speak for much more than merely the fact that United is an airline and runs a schedule.

I was just giving his background quite briefly.

THE COURT: Yes, background qualifying him for subsequent testimony.



I think the Court could even take judicial knowledge of the fact that United Air Lines is an airline.

MR. HOFF: Q. Mr. Moore, I show you United Group Exhibit 4 for identification and ask you to state what that exhibit is.

A. This is the Federal authority issued by the Civil Aeronautics Board which covers our certificate of public convenience and necessity. It outlines the cities and the routes over which [25] United is permitted and required to provide passenger and cargo service.

(The document above referred to was marked Plaintiff's Group Exhibit 4 for identification.)

MR. HOFF: Q. Has United held these certificates authorizing it to fly essentially the same routes from 1963 on?

A. Yes, it has. There are minor revisions as time goes on, but these are essentially the same.

Q. Does United provide any intrastate service in Illinois, Mr. Moore?

A. We do, between Chicago and Moline.

THE COURT: That was in your certificate, wasn't it?

MR. HOFF: The sole purpose in—

THE COURT: All right.

MR. HOFF: This is the only question I intend to ask, and I would like to make the comment to the Court at this point that, of course, we pay the tax on the Chicago to Moline traffic.

THE COURT: I understand that's in your original [26] stipulation.

MR. HOFF: And in the stipulation and other information that is to be presented here, all figures relating to Chicago-Moline have been broken out or are otherwise explained in the exhibits themselves.

I just wanted to make that explanation for the Court's benefit.

THE COURT: Very well, I understand.

**MR. HOFF:** Q. Mr. Moore, I now show you United's Exhibit 5 for identification, and ask you what that document is.

A. This is a geographic portrayal of the cities and routes that United Air Lines is authorized to serve under the C.A.B. certificate.

(The document above referred to was marked Plaintiff's Exhibit 5 for identification.)

**MR. HOFF:** Q. How many cities does United currently serve, Mr. Moore?

A. There are 105.

Q. In serving the route system portrayed on that exhibit, how many takeoffs and landings does [27] United make per day?

A. In December, we averaged 1,769 takeoffs and the same number of landings each day.

Q. Does that include any all-revenue producing flights?

A. That is only the revenue producing flights, the scheduled, the charter and extra section flights.

Q. Mr. Moore, I now show you a document marked "United Exhibit 6 for identification," and I ask you what that document is.

A. This is our system timetable effective January 15, which lists all the flights that we operate in the period shown here effective January 15, 1968.

**THE COURT:** '68?

**THE WITNESS:** Yes, sir.

(The document above referred to was marked Plaintiff's Exhibit 6 for identification.)

**MR. HOFF:** Q. How long in the normal course will that schedule remain in effect, Mr. Moore?

A. In the normal course, it would remain in [28] effect some four to eight weeks. This happens to be effective for six.

**MR. CAMPBELL:** Your Honor, we don't intend to be

technical, but we would like to object to this line of questioning as not having a bearing on the issues raised in the complaint.

**THE COURT:** I don't know that it has or not at this point, Mr. Campbell.

I will overrule your objection at this time. If it has no bearing, you may renew it later.

**MR. HOFF:** All right, I would like to offer these three—well, no. I will hold that for a moment, if the Court please.

**Q.** I now show you United Exhibit 7 for identification and ask you what—will you tell us what that document is?

**A.** This is a list of United airplanes.

(The document above referred to was marked Plaintiff's Exhibit 7 for identification.)

**MR. CAMPBELL:** We would renew the same objection to this document, Your Honor.

[29] **THE COURT:** The ruling will be the same.

**THE WITNESS:** This is a list of our airplanes that we own and operated as of the 31st of December, 1967.

It is broken down hereby jet, jet-prop, and piston; and it also shows the number in scheduled service, the support aircraft, and those which are grounded and waiting disposal.

**MR. HOFF:** **Q.** In other words, 295 aircraft during this period were actually—

**MR. CAMPBELL:** We object to counsel commenting on the exhibit, Your Honor.

**THE COURT:** Objection will be sustained.

**THE WITNESS:** It shows 295 in scheduled service.

**MR. CAMPBELL:** We object to the witness reading from it.

**THE COURT:** Yes, it speaks for itself.

Well, I don't know, Mr. Counsel, now from looking at it. It may need some explanation.

**MR. HOFF:** Q. By "scheduled service," what is referred to?

**THE COURT:** I don't know what "aircraft" means [30] by United. I think I would like some enlightenment on it.

Objection will be overruled.

**MR. HOFF:** Q. By "aircraft in scheduled service," Mr. Moore, what is intended by this heading on this exhibit?

A. These are the airplanes actively used or assigned to scheduled operations as of that date.

Q. And by "scheduled aircraft"—

A. As opposed to support aircraft, which are those that are in training, in project work, in maintenance, assignment in overhaul, and the grounded aircraft are eleven Viscounts which had been withdrawn from service. They are on the ground awaiting disposal.

Q. All right, Mr. Moore, in order to make the average of 1,769 takeoffs per day which you have just referred to, how many takeoffs per day must these 295 aircraft assigned to scheduled service make?

**MR. CAMPBELL:** Objection, Your Honor. Calls for a conclusion of the witness.

[31] **THE COURT:** It is a mathematical process, I suppose, unless some make more than others. I don't know.

Objection is overruled. May answer.

**THE WITNESS:** Your Honor, you are right; some do make more than others. Some aircraft will make only one departure a day. We get as high on some airplanes as fifteen. The average comes out to six, and, as a general rule, the most frequent number would be in the neighborhood of five to six to seven per day per aircraft.

**THE COURT:** That is takeoffs and landings?

**THE WITNESS:** Takeoffs and landings, of course, would be the same number.

**THE COURT:** It happens to be the same. It just can't stay up there.

**THE WITNESS:** That's right.

**MR. HOFF:** Your Honor, at this point, I would like to offer into evidence United's Exhibits 4, 5, 6, and 7, which are the route certificates, the route map, the United schedule, and Table No. 7, which lists the aircraft, and by way of explanation, I would like to state to the Court that these [32] exhibits constitute the basis upon which later evidence will be predicated, summaries of statistical nature.

**MR. CAMPBELL:** We renew our objections to the exhibits, Your Honor.

**THE COURT:** Do you wish to have me withhold ruling until you cross examine on these?

**MR. CAMPBELL:** Beg pardon?

**THE COURT:** You do wish to have the Court withhold its ruling until you have had a chance to cross examine on these?

**MR. CAMPBELL:** No, Your Honor, we do not wish.

**THE COURT:** They will be admitted.

(Said documents, heretofore marked Plaintiff's Exhibits 4, 5, 6, and 7 for identification, were admitted in evidence.)

[33] **MR. HOFF:** Q. Moving now, if we may, Mr. Moore, from the general to the specific, and confining ourselves for the moment only to the operations of United Air Lines, could you tell us in a very general way how Chicago fits into these operations out of O'Hare, how Chicago fits into this general nation-wide pattern of operations that we have been discussing?

A. Our operation at O'Hare is the largest that we have in the system. We enplane more passengers, we have more flights than anyplace else. It is the hub of our operation, the focal point, as far as our connecting services, both on line and off line to—that is, connections from United to



United, or connections between United and other carriers both trunk and local service carriers.

Q. What fact is responsible for this situation, Mr. Moore, fact or facts, if any?

A. Well, first, Chicago is the center of a large metropolitan complex and there is a great amount of traffic destined to or enplaning in Chicago.

[34] MR. CAMPBELL: We would object to the question, Your Honor. The witness was called upon to state a conclusion as to why Chicago happens to be the largest operational center.

We think that this calls for a conclusion. He is called upon to interpret facts.

THE COURT: Well, no. I think this witness is fairly qualified to answer the question.

Objection will be overruled.

MR. HOFF: Q. Go ahead, Mr. Moore.

A. In addition to its—to the needs of Chicago, it is a metropolitan complex by, you could call it, geographic circumstances. It represents a connecting point here in Chicago for that traffic which flows from one part of the country to another.

In Chicago, United, in particular, has a large number of passengers who connect each day, coming into Chicago, let us say, from the East and connecting at Chicago to go to the West Coast, or vice versa, or to off-line points to the South. As a matter of fact, the connections at Chicago are so great that they really help support the over-all operation of Chicago or to carry that one step [35] further, if the traffic at O'Hare was all and only that destined to and from Chicago, we would have far fewer departures and arrivals at O'Hare. The connecting traffic adds to the complexity.

Q. So far, you have been talking about United, I take it?

A. Yes, sir.



**Q.** To what extent is the same thing true of other airlines? If we might, if you would, please, let us talk about other trunk carriers like United, as opposed to local service carriers.

**MR. CAMPBELL:** If he knows.

**MR. HOFF:** If he knows, oh, yes. If he doesn't know, why . . .

**THE WITNESS:** United is the largest of the trunk carriers, but the other trunks have similar situations as United has. Some more with the off line, the terminal carriers, such as Braniff and Continental who terminate here, would have connecting complexes and connection passengers off line—

**THE COURT:** Excuse me.

(Short interruption.)

**MR. HOFF:** **Q.** The last question, I believe, [36] related to the extent to which the circumstances which we have been talking about affected the other trunk carriers. Had you completed your answer, Mr. Moore? I personally don't recall.

**A.** I think so.

**THE COURT:** I hope so on the record.

**MR. HOFF:** **Q.** Well, now, how about the local service carriers? To what extent, if at all, are they in the same situation?

**A.** They are in much the same situation as the trunks, except that most of the local service operation terminates and originates in Chicago. And to that extent, they rely even more upon the connecting business at Chicago.

**Q.** All right, Mr. Moore, I show you a document marked United Exhibit 8 for identification, and I will ask you to state what that exhibit shows.

**A.** What we have here is the projection for the third quarter, 1967, of the category of passengers handled by United Air Lines at O'Hare on an average day.

Q. Only one day, is that correct?

A. This is an average per day, yes.

[37] (The document above referred to was marked Plaintiff's Exhibit 8 for identification.)

MR. HOFF: Q. Why has the third quarter of 1967 been used, Mr. Moore?

A. This is the last quarter for which complete records are available.

Q. Referring to part A of this exhibit, on what are the figures given in that part of the exhibit based?

A. The through-line passengers carried through Chicago are an actual count based on company records. The sixth line, which are the total daily passenger volume in Chicago, is likewise based upon actual records.

The breakdown of the originating passengers enplaned and the destination passengers deplaned is based upon a study completed about five years ago, and it incorporates the ratios which were derived at that time between originating passengers enplaned, passengers carried through, and passengers connecting between United flights, and passengers connecting between United and other [38] carriers.

Q. And with respect to Part B of this exhibit, on what are those—upon what is that figure based?

A. That is based upon an actual first quarter '67 record of the local Chicago-Moline passengers in intrastate service expanded by fifteen per cent, which is the normal expansion we had systemwide between the first and third quarter of '67.

Q. Are the records to which you have just referred present in the courtroom?

A. I have the basic records in my briefcase. I failed to bring them up with me.

Q. That's all right.

A. They are part of the United station summary statistics.

**MR. HOFF:** Your Honor, I will offer United Exhibit 8 for identification.

**THE COURT:** Have you seen it?

**MR. CAMPBELL:** Same objection, Your Honor.

**THE COURT:** It will be admitted.

[39] (Said document, heretofore marked Plaintiff's Exhibit 8 for identification, was admitted in evidence.)

[40] **MR. HOFF:** Q. Excluding passenger growth to the extent that it has or might in the future exist, has the relationship between interstate and intrastate passengers handled by United been substantially the same from 1963 to date?

A. Yes, sir.

Q. And is there any reason to suppose that that relationship would change in the future?

**MR. CAMPBELL:** Object, Your Honor.

**THE COURT:** Objection will be sustained.

**MR. HOFF:** Well, it is not that important a point, Your Honor. But the man—well, let me put it this way:

Q. Based on your experience in this business, Mr. Moore, do you have an opinion as to whether this relationship is likely to change in the future?

**MR. CAMPBELL:** Same objection, Your Honor. We feel that the answer to this question is not relevant to the issues.

**THE COURT:** Well, I am wondering about that.

**MR. CAMPBELL:** It relates to a future matter.

**THE COURT:** It relates to intrastate.

**MR. HOFF:** Of course, we want to show the heavy [41] interstate balance, the flow of traffic, and we think it is relevant.

The State's bulletin theoretically runs on and on into the future. Certainly this expert's and I think he is an expert,

opinion as to what is likely to be the situation in the future is relevant, is admissible on that point.

THE COURT: There is something in your stipulation about that. Well, I will let him answer the question. I will allow him to answer the question.

I am being a little more liberal that way. You may answer the question.

THE WITNESS: Third quarter ratio is about three-quarters of one per cent of the total United traffic United handles intrastate. I would expect that that ratio would stay essentially the same in the future.

MR. HOFF: Q. All right, on a nation-wide basis, Mr. Moore, how many passengers did United handle on an average day during the third quarter of 1967?

A. In the third quarter of '67, we enplaned an average of 72,000 passengers per day.

[42] Q. Mr. Moore, how many takeoffs per day—oh, excuse me.

The average of 1,769 takeoffs per day which United makes throughout the country, how many are made from Chicago?

A. The present count is 244.

Q. Is that more than in any other city in the country?

A. It is more than any other city. It is about twice the number that we have at New York, twice the number at San Francisco, and twice the number at Los Angeles.

Q. The figure you gave was 244.

A. 234. I beg your pardon. I think that was right.

Q. Excuse me. 234.

A. 234.

Q. 234; of those 234 takeoffs per day from Chicago, how many are on through flights, Mr. Moore?

A. 171.

Q. And of the remainder, how many are on short turn-arounds?

A. I believe that number is 21.

[43] Q. Will you tell us what I meant or what we mean by "short turn-around"?

A. A short turn-around is one in which the airplane arrives and in a relatively short period of time, generally in the one to two—up to three hours, and in certain exceptional cases, up to about four hours, would turn around and proceed to another destination with a different flight number.

It is not designed to carry through traffic. It is designed to come in, unload the passengers, and go out relatively soon.

Q. As opposed to a through flight which would have the same flight number, is that correct?

A. Yes.

Q. Mr. Moore, does United maintain records showing the average amount of time which its aircraft spend on the ground in Chicago between different legs of its through flights?

A. We have records like that; yes, sir.

Q. On the number of short turn-arounds, Mr. Moore, would you—you told us 21. Are you sure that is correct?

[44] A. No, as a matter of fact, I think—

MR. CAMPBELL: Objection, Your Honor. This is an attempt here by the attorney to suggest answers to the witness.

THE COURT: Read the question, please?

(Question read.)

MR. HOFF: He would like to correct that answer, maybe I should say.

THE WITNESS: The number is in the forties—

THE COURT: Wait a minute. Well, go ahead, answer the question.

THE WITNESS: I believe the number is 42.

MR. HOFF: Q. Now, we were talking about an aver-

age amount of time spent on the ground by through flights. I show you United Exhibit 9 for identification and ask you to tell us what exhibit shows.

A. By aircraft type, this shows the number of through flights and the average time by each type, and the number of short turn-around flights, and the average time on the ground on short turn-arounds.

Q. The average for through flights is what?

[45] A. In passenger, it is 45.1 minutes; in cargo, it is one hour, forty-three, and over-all, 47.

On the through flights and on the short turn-arounds, the average is just under two hours.

(The document above referred to was marked Plaintiff's Exhibit 9 for identification.)

MR. CAMPBELL: Your Honor, we would object to the questions asked of the witness on Exhibit No. 9. We don't feel that this has any bearing on the issues raised in the complaint whatsoever, about the amount of time spent on the ground of the planes.

THE COURT: Well, it may not. I think the objection is very well taken on the ground that the exhibit speaks for itself.

The objection will be sustained.

MR. HOFF: Very well.

Q. Mr. Moore, what is done to an aircraft when it is on the ground? Let us talk first about through flights.

A. On a through flight, the five major areas [46] of work would be, first, to dock the airplane; that is, to put it in the position at the gate to extend the jet-way out; off-load the passengers and cargo; service the airplane.

That would include mechanical service as necessary, a review of the outside of the airplane, a check of the logbook in the cabin, a check of the oxygen supply, a quick run-through of the cabin—picking up any newspapers or magazines that might have accumulated—straightening up of



the cabin and then the boarding of the fuel and the food, the passengers, cargo, and departure.

Q. On a short turn-around, what, if anything, in addition to the things you have just talked about is done?

A. Primarily, on a short turn-around, the added workload would involve the change of the lavatory service, or an emptying of the tank; and on a more complete cleanup of the cabin area, and it can involve some minor mechanical work at the same time.

Q. Mr. Moore, does United make an effort to keep this ground time on both through flight and [47] short turn-around flights as shown as possible?

A. We do, particularly at O'Hare.

Q. Why is it as long as it is, Mr. Moore?

A. It is primarily to allow for the work involved that I just mentioned, plus the connecting times which are necessary to connect passengers and baggage in the connection banks that we operate.

MR. HOFF: Your Honor, I would like to offer United Exhibit No. 9, which shows these various ground times.

MR. CAMPBELL: Same objection.

THE COURT: Same objection, same ruling. Admitted.

(Said document, heretofore marked Plaintiff's Exhibit 9 for identification, was admitted in evidence.)

[48] MR. HOFF: Q. As a part of your duties in preparing United schedules, Mr. Moore, are you also concerned with the problem of the availability of aircraft at particular airports at particular times?

A. Yes, sir, we are.

Q. In general, what factors do you consider in an assignment of a particular aircraft to particular flights?

A. The principal factors would be the range capability of the aircraft and the size of the market and the limitations on facilities that we might have in an airport, and

the timing of connections, both on line and off line to facilitate the—to expedite the flow of traffic through the O'Hare facility or any other terminal facility.

Q. What is a routing chart, Mr. Moore?

A. A routing chart is a listing in one form or another showing for each day for each fleet the turn-around and the routing of the entire fleet assigned to schedule.

Q. Mr. Moore, I show you United Exhibit 10 for identification and ask you to tell us what [49] that document is.

A. This is an aircraft routing chart for our 28 727 QC aircraft as of the October 29, 1967, schedules.

On the left, we show the cities generally geographically spaced and across the time increments from midnight over to midnight the following day.

Each horizontal line on here, above which a number appears, shows the flight number of an airplane which has just arrived or is about ready to take off at the city involved, and it is drawn so as to depict the time of arrival or departure.

The diagonal line connects the two cities together between which the flight operates. As an example, in the upper left-hand corner, there is a Flight 989, which shows leaving Seattle at approximately 0155 in the morning. It flies to San Francisco. That's SFO. Seattle is SEA. It arrives at San Francisco approximately 3:20 and is on the ground at San Francisco until 4:15, and then proceeds on down to Los Angeles, LAX, and so forth.

Q. Yes. This is 28 planes for one day, is [50] that correct?

A. This is 28 airplanes for one day or in effect what one airplane does because we try to route them through the entire operation. What one airplane will do in a series of—series of 28 consecutive days.

Q. Similar charts exist or are made up for all of the aircraft operated by United on a given day, is that correct?

A. Yes, sir; yes, sir.

(The document above referred to was marked Plaintiff's Exhibit 10 for identification.)

MR. HOFF: Q. What symbol stands for O'Hare on that?

A. O'Hare appears in about the center. It is "ORD." It is outlined above and below with a red line.

Q. Mr. Moore, I have studied this before I came here. I don't attempt to have done this on the spot. But I notice that almost every one of these flights, if not every one, has been in or out of Chicago at least once on this particular day—[51] each one of these planes, I should say. And that some of them have been in and out of Chicago several times.

In that respect, is this particular routing chart typical of United's—the operation of other types of aircraft by United?

A. Yes, this is generally typical and a little easier read than some. The air—

THE COURT: This is easier to read?

THE WITNESS: Than some.

(Laughter)

THE COURT: I will wait until I see the others.

THE WITNESS: All the fleets that we operate touch Chicago, except for the Convair fleet, which is confined entirely to the West Coast and currently to the DC-861 fleet, which is quite small and confined to Honolulu-California operations. All the rest do operate through Chicago.

MR. HOFF: Your Honor, I would like to offer United Exhibit 10 for identification in evidence.

MR. CAMPBELL: Same objection, Your Honor.

THE COURT: It will be admitted.

[52] (Said document, heretofore marked Plaintiff's Exhibit 10 for identification, was admitted in evidence.)

[56] Q. First of all, Mr. Moore—let's have the first slide. I think we have covered this question.

Mr. Moore, will you tell us what—this is United Exhibit 11 for identification, by the way. [57] Will you tell us what that exhibit shows?

A. This is a geographic portrayal of all the cities that United Air Lines is certificated to serve.

(The document above referred to was marked Plaintiff's Exhibit 11 for identification.)

MR. HOFF: Q. And the next one, please? This is United Exhibit 12 for identification. Will you tell us what that shows, Mr. Moore?

A. This is the same basic format of the cities which have red circles around the dots and are those to which—to which through service is offered between Chicago and each of those cities.

(The document above referred to was marked Plaintiff's Exhibit 12 for identification.)

MR. HOFF: Q. And the next one. This is United Exhibit No. 13 for identification. What does this map show?

A. This shows the lines—shows the segments and they connect the points between Chicago and the other cities here to which nonstop service is [58] provided.

(The document above referred to was marked Plaintiff's Exhibit 13 for identification.)

MR. HOFF: Q. Mr. Moore, in what way, if at all, does United arrange its service to handle the volume of connecting traffic through Chicago which you described earlier?

A. We intentionally time our flights to provide what we term a connection bank. Several times during the day, we bring a large number of airplanes in, let us say, from the East and connecting at Chicago to go west.

Our routes are predominantly east-west of Chicago. We also connect off line to and from the trunk carriers and the local service carriers.

**Q.** All right, now can we have the next one? This is United Exhibit 14 for identification. Mr. Moore, would you tell us what this exhibit shows?

**A.** The block in the middle marked "O'Hare" separates the destinations—let's say the cities east of Chicago and those west on United's route. [59] This is what we call our 1300, or 1:00 bank of flights. Those flights shown on the right, the blue lines here, represent the number of flights and where they come from. It is a little difficult to read, but that, I believe, is South Bend (indicating), this is Fort Wayne (indicating), that's Cleveland, and so forth.

These flights come into Chicago. Some will go through. All will connect to the outbound flights going to the West to Minneapolis, St. Paul; I believe that's Milwaukee (indicating), Seattle, Portland (indicating), and so forth. Each line represents one flight.

**Q.** The connections are possible from every incoming flight to every outgoing flight in this particular bank?

**A.** Yes, that's right.

(The document above referred to was marked Plaintiff's Exhibit 14 for identification.)

**THE COURT:** What is the significance of the double line to Los Angeles?

**THE WITNESS:** We happen to have, Your Honor, [60] so much traffic that one airplane will not carry it; so in that bank, we have two flights.

**THE COURT:** Like the old "Twentieth Century" used to carry two trains?

**THE WITNESS:** Yes. Some day, we hope to get a larger airplane.

**MR. HOFF:** **Q.** This is what you call your 1300 bank?

**A.** Yes.

**Q.** There are other banks during the day?

**A.** Yes, there are several other banks during the day, both eastbound and westbound.



Q. All right, can we see the next one, which is United Exhibit 15 for identification? Does this relate to the same connecting bank, Mr. Moore?

A. It does. It is the same bank; in blue again are the United flights in and out, and in the darker color are the other trunk flights outbound from Chicago.

For example, there is a flight to Great Falls and Billings, there is another flight to Minneapolis-St. Paul, there are two other flights to Los Angeles, there are two flights to [61] San Francisco, and so forth.

Q. Again, are connections possible from all of the incoming flights shown on that map to all of the outgoing flights?

A. Yes, these are only those to which connections are made within one hour time.

Q. One of your westbound flights seems to swing back south and east, Mr. Moore.

A. Well—

Q. What is the explanation for that?

A. That is shown—that is down to Atlanta and into the Florida area, and that is shown because there is some traffic that backhauls, or, let us say, goes slightly west first in order to go south. For example, from Flint and Saginaw up in Michigan, from Lansing to Muskegon, from South Bend to Fort Wayne, there is traffic that flows into Chicago-O'Hare and then connects to Atlanta, Jacksonville, and Miami.

Q. For that traffic, Chicago happens to be the most convenient connecting point, is that correct?

A. That's right, that's right.

[62] (The document above referred to was marked Plaintiff's Exhibit 15 for identification.)

MR. HOFF: Q. Now, can we see the next one? Now, again, the same connecting bank, this whole series is the same connecting bank; is that correct?

A. Yes, sir, that is correct.

Q. Tell us what this one shows.

A. It is the 1:00 p.m. bank and here again we have shown only United flights coming in, going out. We show here, in addition to United in blue and the trunk carriers in the darker color, we depict here in red connections to the local service carriers at O'Hare. Again, all the flights coming in will connect to all these going out.

(The document above referred to was marked Plaintiff's Exhibit 16 for identification.)

MR. HOFF: Q. Next one, and this one is?

A. This is somewhat the reverse of the second one of this type (indicating). This shows only United outgoing, but it shows the blue lines of United incoming to Chicago and in the darker lines, [63] the trunk carriers in addition to United between passengers in and cargo in for connection.

Here again, all the inbound flights connect all outbound flights.

(The document above referred to was marked Plaintiff's Exhibit 17 for identification.)

MR. HOFF: Q. All right.

A. This one tends to include the local service carriers coming into the O'Hare 1:00 p.m. westbound bank showing United in blue, other trunks dark, local service in the red color connecting only to the United flights west.

(The document above referred to was marked Plaintiff's Exhibit 18 for identification.)

MR. HOFF: Q. Now, this series of five exhibits, or five slides, if I understand it correctly, shows only connections which are possibly either from or to United in this particular connecting bank, is that correct?

A. That's correct.

Q. Or other combinations of connections [64] possible?

A. Oh, yes. The carrier—or a passenger could come in on another trunk carrier to O'Hare at essentially the same time of day and connect with one of the local service carriers on another trunk.

**MR. HOFF:** All right, Your Honor—

**Q.** Well, one more thing, Mr. Moore. I now show you United Exhibit No. 19 for identification and I ask you if you would please state—

**MR. CAMPBELL:** Your Honor, pardon me. I don't know whether you have ruled. I object to this.

**MR. HOFF:** I am going to offer copies of all these exhibits, including the one that I am now showing him.

(The document above referred to was marked Plaintiff's Exhibit 19 for identification.)

• • •

[66] **Q.** Mr. Moore, you have before you now United Exhibit 19 for identification; would you tell us what that is?

**A.** We had talked about connecting banks. What this does is list the five major eastbound banks and five major westbound banks.

(The document above referred to was marked Plaintiff's Exhibit 19 for identification.)

**MR. HOFF:** I didn't give you one of these. I'm sorry. (Addressing Mr. Campbell.)

**THE WITNESS:** In the right-hand column is a calculation of the number of cross connection possibilities. These are from one flight to another flight, the number of connecting possibilities available to the traveling public in each of these ten different banks.

**MR. HOFF:** Well, if the Court please, I would [67] like to offer at this time, and I understand that you are reserving ruling on the photographs which correspond to the slides, I would like at this time to offer United Exhibit—formally offer United Exhibits 11 through 19 for identification. They are all connected to this connecting bank.

**MR. CAMPBELL:** We renew the objection as just stated.

**THE COURT:** For whatever bearing it may have on the third point . . . this is a violation of the Federal Constitution of the Commerce Clause . . . it may have some bearing on it. I don't know.

But again perhaps for whatever bearing it may have, I am going to admit them in evidence.

(Said documents, heretofore marked Plaintiff's Exhibit 11 through 19 for identification, were admitted in evidence.)

[68] **MR. HOFF:** We will sort these out, Your Honor, and distribute copies of them.

**THE COURT:** All right.

**MR. HOFF:** Q. Mr. Moore, in setting up these connecting banks, does United cooperate with other airlines?

A. We cooperate very closely in setting up of the banks and in setting down the connections themselves. The whole industry has to maintain a very interdependent attitude here.

Q. In that respect, are the schedules of other airlines and in particular of the local service airlines dependent on United's schedules?

A. Yes, sir.

Q. And quite apart from the convenience of the connecting—these connecting banks and making connections, to what extent are other airlines, whether trunk or local service, dependent on United?

A. I think we are all interdependent upon each other whether we have connection banks or individual flights which connect.

In order to expedite the flow of traffic through O'Hare Airport and to utilize the facility [69] as efficiently as possible, it is incumbent upon the entire industry—United and all the other carriers—to work together, and we depend upon, to a certain extent, upon their timing, and they depend to an even greater extent upon our timing.

**Q.** Are United's own operations in other parts of the country dependent on or controlled by its operations in Chicago?

**A.** They are. Chicago is the keystone in the—in our arch of planning.

**Q.** Could you give us a few examples of what you mean?

**A.** The timing is one example, the timing across the Los Angeles-San Diego segment to the extent that it relies or is part of a Chicago-Los Angeles-San Diego through service would be dependent upon the time of the connection back at Chicago.

Another example is the—a specific example, we have a flight at 5:00 p.m. out of Chicago to Denver—

**MR. CAMPBELL:** Your Honor, we will stipulate that other airlines are dependent upon United Air [70] Lines.

**MR. HOFF:** I think he is almost through with his answer. Maybe he was—

**THE COURT:** Naturally, I would like to hear about this one about Denver.

**THE WITNESS:** We have a flight at 5:00 p.m. from Chicago to Denver, which proceeds on through to Reno and Sacramento, and provides through service to those points, and it provides Chicago-Denver service at 5:00 p.m.

**THE COURT:** Off the record.

(Discussion had off record.)

**THE COURT:** We will take a short recess.

(Short recess.)

**THE COURT:** You may proceed.

**MR. HOFF:** **Q.** Mr. Moore, are all of United's flights which pass through Chicago fueled while they are in Chicago?

**A.** Practically all would be fueled here.

**Q.** When does fuel—in the case of through flights—when does fueling take place?

**A.** Well, there is very little time for slack on either side. Fueling takes place shortly after [71] arrival and shortly



before departure. As a rule, it depends upon when the fuelers and the equipment is available, but usually it is just shortly before takeoff.

Q. And on short turn-arounds, when is the fueling permitted?

A. Essentially the same.

Q. Mr. Moore, as far as the basic operational facts to which you have testified are concerned, do you foresee any change in the pattern and volume of United's operations in the future?

A. Only growth.

MR. HOFF: That is all for this witness, Your Honor.

THE COURT: Cross examination?

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[75]

JOHN G. ARTUS

was called as a witness herein, having been first duly sworn, was examined and testified as follows:

### DIRECT EXAMINATION

BY MR. HOFF:

Q. Will you state your name, please?

A. My name is John G. Artus.

THE COURT: Spell your last name.

THE WITNESS: A-r-t-u-s.

MR. HOFF: Q. And your business, Mr. Artus? Do you have a title?

A. I am a flight manager and check pilot for United Air Lines.

Q. You are referred to as "Captain," I think.

A. Yes.

Q. Where do you live, Captain Artus?

A. I live at 820 Country Drive, Barrington.

Q. By whom are you employed?

A. United Air Lines.

Q. And your present title again?

A. Flight manager.

Q. As flight manager, Captain Artus, what are your responsibilities?

[76] A. Well, I have sixty some pilots assigned to me, and I have direct supervision over them to check them periodically as to their proficiency and see to their route qualifications and generally supervise their entire activity.

Q. Do you fly?

A. Yes.

Q. As flight manager, do you fly?

A. Yes, I do.

Q. To what extent?

A. Well, I am at the controls myself approximately 25 hours a month and fifty to sixty hours a month, I am in the cockpit as check pilot.

Q. How long have you been a flight manager for United?

A. About a year and a half.

Q. Prior to that, how long had you been a pilot?

A. Well, I started flying in 1939.

Q. Will you briefly tell us the history of your career as a pilot?

A. Yes. I started flying in 1939, and when my experience level was at the point that I could [77] apply with an airline, I applied for a job as first officer, or a co-pilot, with Pennsylvania Central Airlines, which later became known as Capitol Airlines and subsequently merged with United Air Lines in 1961.

Q. Your present flying is out of and back into O'Hare, is that correct?

A. That's correct.

Q. Prior to that, have you also flown in and out of O'Hare?

A. Yes, I have flown in and out of O'Hare as long as it has been in existence.

**Q.** Were you stationed—you have been stationed at Chicago, so to speak, for how long?

**A.** Four and a half years.

**Q.** Captain Artus, are you familiar with the air traffic control function of the Federal Aviation Agency?

**A.** Yes, I am.

**Q.** Would you describe that function, please?

**A.** Well, the air traffic control system—

**MR. CAMPBELL:** We object, Your Honor, to this line of conversation as to the—I assume that the [78] F.A.A., Federal Aviation—

**THE WITNESS:** Agency.

[79] **MR. HOFF:** **Q.** Go ahead, Captain Artus.

**A.** Well, the air route traffic control system is a department of the Federal Aviation Agency and its prime responsibility is the separation of aircraft operating on a time flight rule condition. And to do this, their basic working tool is a system [80] of radar, in which aircraft are identified and tracked by a controller at a radarscope much like a TV screen. And he follows the blip across this screen. And as a result, he knows absolutely where the aircraft is and what route it is traversing.

**Q.** Would you describe how this works in the case of a particular flight beginning at the point of takeoff and carrying it through to the borders of Illinois?

**A.** Well, every flight that departs O'Hare on an instrument flight rule clearance files a flight plan for the particular route, and these routes are laid down, as you might say, highways in the sky. They are specified routes that are eight miles wide that we have to follow.

When a flight departs here, he is vectored or given a heading to one of these routes that he would select. To do this, he is given a heading to fly, after takeoff at O'Hare, and if I could use the case of a westbound flight, taking off

on Runway 27, which is heading—270 degrees heading to the west, the controller will tell him [81] to maintain a heading of 270 degrees after takeoff.

From that point, he changes his radio frequency to what we call departure control and this is the first man in this radar network that handles him, and he is located right at O'Hare Field. And he continues him on these vectors until he gets to his specified airway. He is "at and off," as we say to the air route controller by the time—by the time that he is fifteen or twenty miles west of O'Hare, and then this function is taken over by the air route traffic controller who is located in Aurora, Illinois, and he continues him from that point.

Q. You mentioned instrument flight rules. Are all United's flights flown under instrument flight rules?

A. Yes, it is under policy to fly all flights on instrument flight rule condition, and as a result, we are under the positive control of these radar operators.

Q. By means of this system, are aircraft assigned to particular departure routes as they depart from O'Hare Field?

[82] A. Yes, they are.

Q. You referred to flight plans, Captain Artus. Would you tell us what a flight plan is, and would you tell us if there is more than one type, and would you describe them, please?

A. Well, a flight plan is information needed and required by the air traffic control system, and it has to be filed prior to departure; so that the aircraft can be given a clearance and in a flight plan is specified the route of flight, the altitude to be flown, the true air speed, the time of the flight, and various other information items that pertain to technical equipment on the airplane.

And when this is filed, it is accepted by the air traffic control system.

Q. Is it always accepted? Let me interrupt for just this one question.

A. Yes, it is always accepted, and there could be some delays incurred in being able to allow this flight on this airway at that particular time because of conflicting traffic.

Q. All right. Is there any difference between short range and long range flights as far [83] as flight plans are concerned?

A. Well, short range flights are what we consider anything under 1,200 nautical miles and we have—now we have a system which we call Center Stored Flight Plan. These pertain to flights that operate day in and day out the same flight number, and so on. And we store these flight plans in the Center, in the computer in the air traffic control center, and these have a standard routing, and a standard time enroute, a standard altitude, and it is used day in and day out, and always over the same route.

On long range flights, more than 1,200 nautical miles, there is a choice of various routes mainly due to operational factors—such as weather on one particular route, or strong headwinds on another—that you may select one or the other route rather than the primary.

Q. How often does the pilot on short range flights—how often does the pilot follow the Center Stored Plan?

A. All of the time with the exception of weather; he might want to deviate from it in that [84] case.

Q. As a result of the system which you have described, Captain Artus, can United determine geographically where its aircraft fly over the State of Illinois when departing from O'Hare Field going to a specific direction?

A. Yes, they can.

MR. HOFF: We have one more slide, Your Honor.

MR. CAMPBELL: We enter our objection again, Your Honor, unless counsel can indicate to the Court what the basis of the slides are.



MR. HOFF: Oh, excuse me. This is going to be the map of Illinois which will show the departure routes which this witness has been testifying to.

It is going to contain certain other information which will be verified and authenticated by the third witness, which we are offering as a part of our direct case, Mr. Titus, who is sitting here in the back of the courtroom.

MR. CAMPBELL: I think certainly the Court can take judicial knowledge of the exhibits that are already into evidence and certainly the Court takes judicial knowledge of the State of Illinois [85] and the location of O'Hare Field.

MR. HOFF: These are going to show routes through Illinois.

THE COURT: Well, this is primarily nation-wide, the other exhibits that I have.

MR. CAMPBELL: We will again offer to stipulate that the plaintiff flies out of O'Hare, Your Honor, in various directions and on various flight plans.

THE COURT: And I am interested in what the various directions are.

MR. HOFF: Exactly, Your Honor.

THE COURT: Very well.

What exhibit number is this? 20?

(The document above referred to was marked Plaintiff's Exhibit 20 for identification.)

MR. HOFF: Q. Captain Artus, this map, as you notice, shows the State of Illinois. Have you checked—the red lines shown on this map, are those the departure routes which you have been testifying about?

A. Yes, they are.

[86] Q. Have you checked the accuracy of those departure routes as shown on this map?

A. Yes, I have.

Q. Could you identify some of the Center Stored short-range routes that you have testified to?

A. Yes. For instance, if I can point out Route M, I believe it is here, this is a Center Stored short-range route to Denver, which is basically what we call a radar vector to Des Moines, Iowa, and from that point, you pick up the number of the jet airway that runs from that point to Denver.

Now, this is true of every one of those routes shown, that these are all radar vectors to a particular airway.

Q. Could you point out one of the long-range routes?

A. Yes, this dashed line shows a long-range route to Los Angeles.

Q. Why is that route dashed, Captain Artus, or as shown by a dashed line?

A. It is very rarely used. We have it in [87] our computer, stored in our own computer as a safety valve, let us say, because of weather; you might have a squall line up to the northwest or to the west, and it might be all clear to the southwest. So the pilot would elect to fly this route rather than one of the primary routes.

Q. Are those all of the routes you testified about?

A. Yes.

Q. Is there any possibility that a pilot might use one of the routes—excuse me—a route which is not shown on this map?

A. No. He has to take a radar vector to one of the established jet routes.

Q. Okay. That's all on that.

We are not offering that exhibit at this time, Your Honor. There is some other material on there that will be offered by another witness, as I have indicated.

You have indicated that while using one of these vectored routes out of O'Hare and the aircraft is under the positive control of the Federal Aviation Agency personnel. Does this raise [88] the possibility that while following one of these established departure routes, aircraft control would

instruct the pilot to depart from that route in some respect?

A. Yes, they quite often, because of the conflict with traffic, they will assign a different radar vector other than the standard.

Q. Could you in terms of specific headings, could you give us an example of such a change?

A. Well, the standard radar vector to Des Moines is 270 degree heading, and because of inbound conflict with traffic, they may assign you to a 260 heading, or possibly a 280 heading.

But after the conflicts have been relieved, they would either vector you back to the original track or a parallel track.

Q. How much additional mileage inside the borders of Illinois would such a change in heading normally add?

A. This would add one mile to the difference between a 260 and a 270 heading.

Q. In the example you have given?

A. Yes.

[89] Q. One mile?

A. One mile.

Q. What would an extreme case be in terms of additional mileage within the State of Illinois as occasioned by one of these changes?

A. I would say the extreme limit would be perhaps five miles.

Q. Captain Artus, are there standard procedures under which United's aircraft are flown?

A. Yes.

Q. In a very general way, what do these procedures cover?

A. Well, we calculate the standard operating procedure, which is laid down in our approved flight plan manual, and this flight manual is our bible. It has every bit of informa-

tion that we need to operate the airplane in a safe manner and an economical manner.

Q. Do these procedures or flight manuals specify the power settings to be used by the pilot during various phases of the flight?

A. Yes, they do.

Q. When we say "phases of flight," in general, [90] what phases are we referring to?

A. Takeoff, climb, cruise, and descent.

Q. Must these procedures, as set forth in these flight manuals, be followed by the pilots?

A. This is what we check them for and we require that they do follow the standard operating procedure.

The captain always has the right to exercise his emergency authority and depart from some established procedure if he feels it is the safest course of action.

Q. What would be the effect on fuel consumption if the pilot were to deviate in one of the respects that you have just testified to?

A. Well, as far as the fuel, the fuel would remain—the fuel flow consumption would remain fairly constant. What I am speaking of is a deviation because of a conflict with another airplane that was not pointed out to him—something that popped up.

Does this answer your question?

Q. I think to my satisfaction anyway.

Captain Artus, are you familiar with the [91] stipulation that was entered into with the State in which it describes the aircraft departure routing system in effect from 1960 to approximately 1964?

A. Yes.

Q. Are you familiar with that stipulation?

A. Yes.

Q. Have there been any substantial changes in that aircraft departure routing system since that time?

A. No, there have not.

Q. Do you anticipate that there will be any material change in that departure routing system within the foreseeable future?

A. To my knowledge, I don't anticipate any.

Q. On what do you base that opinion?

A. I beg your pardon?

Q. On what do you base that opinion?

A. Well, the radar system is a proven system and it is basic to the operation of the entire air traffic control. And so I say to the best of my knowledge, it could be in the future—unless in the distant future they come up with some more [92] economical system, but we have the radar system and it is firmly established, and I know we are going to stick with it. So I don't anticipate any changes.

Q. United is beginning to operate more flights out of Midway, Captain Artus. Will the basic pattern of operations out of Midway be the same as at O'Hare?

A. Yes, it will.

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[93] F. E. TITUS

was called as a witness herein, having been first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

By Mr. Doyle:

• • •

[101] MR. DOYLE: Q. Now, Captain Artus testified as to the standard procedures under which United flights are operated, and he mentioned that they appear in a flight manual.



Are you familiar with the flight manuals promulgated by United?

A. Yes, I am.

Q. And by whom are the—maybe I should say it another way.

What department of United has responsibility for promulgated flight manuals?

A. The flight operations department.

Q. And the standard operating procedures mentioned by Captain Artus, by whom are those prepared?

A. The standard operating procedures have part of their origin from the Federal Aviation Agency. Certain procedures are mandatory. These procedures are supplemented with so-called company procedures and the total procedures are contained in this flight manual.

MR. CAMPBELL: Your Honor, again we—I don't wish to interrupt, but we must renew our objections [102] to this line of questioning and answers as intending to duplicate what the last witness testified to, and again we find ourselves involved in the flight plans again.

THE COURT: There would seem to be some duplication here. I think, however, this witness' testimony is in some ways explanatory of the previous witness, Artus.

MR. DOYLE: I might add, Your Honor, that we are merely laying a predicate to introduce the flight manual as an exhibit, and to that extent, we are somewhat duplicative, but I am done with it. I am ready to put the exhibit in.

THE COURT: All right.

MR. DOYLE: Q. These flight manuals are promulgated in written form, are they not, Mr. Titus?

A. Yes, they are.

Q. I now hand you United Exhibit No. 22 for identification. Would you please explain what this is?

A. This is the airplane flight manual for the Boeing 727 type aircraft operated by United and the flight manual is in two volumes.

[103] Q. Are these manuells approved by any governmental agency?

A. Yes, they are approved by the F.A.A.

(The document above referred to was marked Plaintiff's Exhibit 22 for identification.)

MR. DOYLE: Q. I now show you United Exhibit 23 for identification. Will you explain what this is?

A. This is merely the letter granting the approval to the company airplane flight manual from the Federal Aviation Agency.

(The document above referred to was marked Plaintiff's Exhibit 23 for identification.)

MR. DOYLE: Your Honor, at this time, I move that United's Exhibits 20, 21, and 22 be received into evidence

MR. CAMPBELL: We would object, Your Honor, as the same have no bearing on the issues again raised in the pleadings in this case.

MR. DOYLE: Your Honor, I would like to speak—

THE COURT: Well, I will overrule it, Mr. Campbell. It may have some bearing on this. [104] I'm not sure, and I am going to admit them. If they have no bearing, then the Court will—

MR. CAMPBELL: We didn't get a copy of these. Is there a copy for—have you given us copies of all the other exhibits?

MR. DOYLE: I'm sorry. Those are about \$425 each.

MR. CAMPBELL: We have not had an opportunity to examine these—

THE COURT: I will give you all the time you wish.

MR. CAMPBELL: —these documents, Your Honor, and prior to their being introduced into evidence, we would certainly want—

THE COURT: I will withhold my ruling until you have had an opportunity to examine them.

**MR. DOYLE:** Our Exhibits 20 and 23 are then in?

**THE COURT:** I think I am going to admit your Exhibit No. 20. I can see that may have some materiality.

(Said document, heretofore marked Plaintiff's Exhibit 20 for identification, was admitted in evidence.)

[105] **THE COURT:** I will withhold ruling until counsel has had a chance to examine them since he hasn't seen them.

**MR. DOYLE:** Q. Now, are there similar manuals to the one you identified with respect to the Boeing 727 for each of the types of aircraft flown by United?

A. Yes, there are.

Q. And are each of these manuals approved by the Federal Aviation Agency?

A. Yes, they are.

Q. Do these manuals include fuel consumption figures for the specific type of aircraft covered?

A. Yes, they do.

Q. On what are these fuel consumption figures based?

A. The original figures are provided by the manufacturer when we first get an airplane from him, and they are constantly audited by United Air Lines as the experience is acquired with the airplane and revised where and whenever necessary.

Q. And are fuel consumption figures given for each power setting on which the aircraft may [106] be operated?

A. Yes, they are.

Q. By referring to the standard operating procedures contained in the flight manuals and the fuel consumption tables developed for each type of aircraft, it is possible to determine how much fuel a specific type of aircraft will use departing from a specific airport when it travels a distance that is known?

A. Yes.

Q. How would this be done?

A. This would be done by taking the various phases of flight, takeoff, climb, and cruise, and determining the amount of fuel burned in each case and totaling the amount.

Q. Would it also be necessary to make an allowance for fuel on the ground?

A. Yes, for taxiing.

Q. Does United have current studies of its taxiing at O'Hare Field?

A. Yes, they do. United is constantly monitoring taxi times not only at O'Hare, but the entire [107] system, since this is an important ingredient of the flight schedules that we publish.

Q. Knowing the taxi time, is it possible to determine the amount of fuel that an aircraft will consume during the taxi portion?

A. Yes, it is.

Q. Mr. Titus, I show you United's Exhibit No. 24 for identification. Would you explain what this is?

A. This is a compilation of the fuel that would be burned out by each type of aircraft operated by United in going from O'Hare Field to the Illinois border over the various routes that have been indicated on the chart that has been displayed.

(The document above referred to was marked Plaintiff's Exhibit 24 for identification.)

MR. DOYLE: Q. Do these calculations assume if standard operating procedures were followed on the part of United's pilots?

A. Yes, they do.

Q. What would be the effect if there were [108] permissible deviations from these standard procedures?

A. The effect would be negligible.

Q. In other words, your calculations assume more rather than less fuel would be used?

A. Yes.

. . .

[126] MR. CAMPBELL: The second motion, Your Honor, is a motion which was served upon the attorneys for United Air Lines this morning at 10:45; and I would just like to comment to the court the reasons for this motion.

This motion directs the plaintiff, United Air Lines, to produce for examination before this court a witness or an agent who is familiar with the matters alleged in the amended complaint.

THE COURT: And out of the county?

MR. CAMPBELL: I beg your pardon?

THE COURT: And out of the county? I think the rule says out of the county, doesn't it?

[127] MR. CAMPBELL: No, Your Honor, this is rule two—

THE COURT: Let's read it and see.

MR. CAMPBELL: 237.

THE COURT: Read it.

MR. CAMPBELL: All right, I have it here.

THE COURT: Maybe I am confused—

MR. HOFF: We have no objection as to the form—

THE COURT: But I haven't seen it in some time.

MR. CAMPBELL: I will show it to Your Honor, Rule 237. There is no time limitation contained in the rule.

THE COURT: "If at the time the notice is served the party or person is a non-resident of the county, the court may order any terms and conditions in connection with his appearance at the trial and that are just, including payment of his reasonable expenses."

MR. CAMPBELL: Yes, and United Air Lines is authorized to do business in the state—

THE COURT: The rule says if at the time the notice is served the party or person is not a [128] resident of the county—it is my recollection that this was in the rule—the court may order—in other words, the theory, of course,



being if he is in the county he can be served with a summons or subpoena. That is the last sentence in that rule.

MR. CAMPBELL: I wanted to apprise the court the reason this motion was served.

THE COURT: Well, we are talking about another—maybe they will produce him anyway?

MR. BERENS: We have no objection as to the form, although we are somewhat curious as to its purpose.

MR. CAMPBELL: We wanted to explain—

THE COURT: Well, of course, the purpose at this point is no concern of mine.

MR. BERENS: Yes.

MR. CAMPBELL: We wanted to explain the basis for this motion, Your Honor. It became apparent yesterday from the witnesses who testified that perhaps the plaintiff here would not call a witness who could be examined by this court relating to the sale or purchase of the fuel which arrives in East Chicago and Hammond, Indiana, and transported [129] to DesPlaines and then to O'Hare Field. We feel that the basis of this lawsuit—

THE COURT: Excuse me. I don't interrupt very often, but this will be the last one, I assure you, it is a long distance call that I placed.

(Short interruption.)

MR. CAMPBELL: As I was stating, Your Honor, it became apparent yesterday that we didn't feel that the plaintiff would call in a witness who would testify as to the matters relating to the purchase and sale of this fuel and to testify about the transportation of this fuel, the storage of this fuel at DesPlaines and the subsequent delivery of this fuel to O'Hare Field.

We felt that it was necessary—since this is a tax exemption suit that the plaintiffs here are seeking, a complete exemption of the use tax involved here, and the complaint

also states that it is a class action, we felt that in order to aid the court that it would be necessary to have all of the facts before the court in order to pass on this question. We felt that perhaps the plaintiff was not going to produce such a witness, and that is the reason for this motion.

[130] THE COURT: Is there any objection to the—you don't want them all, I take it?

MR. CAMPBELL: One witness; one witness who can testify as to the matters in the complaint and the paragraphs that we have referred to in the stipulation. In conversation and conferences with counsel, and a deposition, we find that perhaps the facts may be different from the stipulation paragraphs.

THE COURT: We commented on this yesterday, five, six, seven and eight.

MR. CAMPBELL: Yes, and we feel in order to be fair to the court and fair to the taxpayers, since this does involve revenue—

THE COURT: And fair to the state.

MR. CAMPBELL: I beg your pardon?

THE COURT: And fair to the state.

MR. CAMPBELL: Yes; and since it does involve revenue, that it would be in the best interest of all of the parties to have a witness here to testify to these matters—

THE COURT: How about it?

MR. CAMPBELL: —and to be examined.

MR. BERENS: Your Honor, we will object to [131] producing a witness on any questions or facts that tend to contradict the specific terms of the Stipulation. Now, I have to make my position very clear here. Yesterday we introduced evidence over objection of counsel, which we said supplemented the original stipulation.

THE COURT: That's right.

MR. BERENS: We also used the phrase that it updated —although we didn't mention this yesterday, we can point

out certain updated information that we voluntarily entered yesterday that was adverse to our case. The facts on some of the fuel consumption had slightly deteriorated in terms of our contention that the fuel is wholly burned outside of Illinois.

We think that the effort of the state here is quite a different question. It is attempting to specifically contradict paragraph 4 of the stipulation—excuse me.

THE COURT: May I have my file. I think I took that file inside, didn't I. See if you can find it.

MR. CAMPBELL: Here is a copy of the stipulation, Your Honor.

THE COURT: All right. You are talking now [132] about paragraph 4?

MR. BERENS: I misstated, Your Honor; paragraph six.

THE COURT: Yes.

MR. BERENS: Which reads in part that all of the fuel purchased by United from Shell Oil Company is delivered to United with possession, title and all risk of loss passing to United either at Hammond, Indiana or East Chicago, Indiana.

Now, counsel yesterday pointed out several times in his objections on how hard we strived to get this stipulation, and he is quite right. We remember working for months on and off with the department and with the Attorney General's office in getting this stipulation.

At the time of the negotiations, as in all stipulations, there were areas which were being highly negotiated as to phraseology so that neither one side or the other would get an advantage. This stipulation was a good deal more narrow than what we had proposed originally as fair to both sides.

We had to make these concessions in various areas, but we did not make any concession, I don't believe, in the area of paragraph six, that [133] is, where delivery, risk of loss, title and possession had been made.

One of the express conditions of the state as to entering into this stipulation was the withdrawal of two interlocutory appeals we had taken on the earlier order of the court. And I would like to go back a little bit on this, because Judge Brothers handled that. We came in originally asking for relief both for the past and the so-called current period on the general equity jurisdiction of this court, not under the protest fund act. It was our contention that this was so clearly a misapplication of the law that equity should act to prevent anything from being collected, even in a protest fund.

Judge Brothers agreed with us as to the past period; he did not agree with us as to the current period.

THE COURT: You mean the period prior to July 1, '63 or—

MR. BERENS: Yes, for that we got the temporary injunction. For the period from that date, he was only willing to grant a protest fund injunction. This, of course, is a matter of discretion of the [134] trial judge.

On our research of the law at the time, it was—particularly the Baumgartner case and a few others in that area, we thought he had made a mistake and had abused his discretion in not allowing equity jurisdiction, particularly when United was willing to put up a very considerable bond to avoid paying this large sum of money during the pendency of this litigation into the protest fund.

We had to take two interlocutory appeals because of the confusion in the Illinois rules as to where an interlocutory appeal on a revenue matter goes. So we had dual appeals pending in the Appellate and Supreme Court for several months during which we were negotiating this stipulation. The stipulation was entered into on the 16th of January of '66; it was filed the 19th of January in this court, and pursuant to our agreement with the state we withdrew both appeals on the interlocutory issues on February 1st of that same year.

In the meantime, because of the withdrawal of that appeal and our assumption that the Appellate or the Supreme Court would have ordered [135] a reconsideration of this court of its original ruling not to grant a general equity injunction, United has paid a very substantial sum of money into this protest fund at a time, incidentally, when they are trying to refinance very considerable expenditures in jet aircraft and other facilities.

As we read the Illinois law, and which I have a memorandum here, Your Honor, if you should like to see it, a stipulation entered into between the parties is considered from two viewpoints: One, in the nature of a contract between them where one is making concessions in exchange for other concessions. The other viewpoint that the law has is that this is a means of facilitating the judicial process; and if we can get some things out of the way by stipulation, they will remain out of the way during the litigation.

There are three exceptions to this rule, one is fraud, which is self-evident; two is a mutual mistake of fact, or material fact; and the third which is, from what we can tell from our research, used very sparingly, is that there has been a change of fact since the stipulation which justice would require that the parties be relieved, [136] or one of them be relieved, of the burden of the stipulation.

Now, in counsel's opening presentation, he did not imply or assert fraud; I don't believe he was implying or asserting mutual mistake.

Now, let us look to the question of change. Shortly after, or shortly before the bulletin, and I am not sure on the facts on this, United was audited very thoroughly by one or more auditors of the Department of Revenue. They went very carefully into this area of where United was purchasing the fuel and where it was delivering it. These auditors did not set up—so far as we know, because we received no proposed assessment, on the basis that this was delivery



in Illinois and therefore very obviously taxable. Similarly Shell Oil Company, who is our supplier has been audited up through the year 1965, and at no time did any auditor assert that they were subject to the retailers' occupation tax for having delivered this fuel or sold it to us in Illinois.

At the time the stipulation was being negotiated we repeatedly offered to Mr. Campbell's predecessor, Mr. Dore, and I think during the latter [137] period to Mr. Campbell and to John Gaughan, who was with the Department of Revenue at that time, invited them to check with us these facts.

We said "We are trying to get a fair stipulation, one that will be helpful and one that naturally will be as good as it can be for our client's position, but we want you to be sure that we are not over-reaching here."

This offer must have been made in a half dozen conferences. They did not take up the offer at that time, indicating, I would say, that their audit was adequate and that they felt we were people that they could rely on.

Last summer, a year and a half after the stipulation was entered into, I believe it was Mr. Bromberg, who initially contacted one of my partners and said "We would like to go into the delivery question."

And I interpose here, Your Honor, we are not going to claim surprise on this, because this would be an unfair assertion on our part. We discussed this with the client, who was reluctant to go through a reaudit and take up the time of people going over stuff that they thought had been [138] gone over once before very thoroughly. We insisted to the client that first of all that the state has the right to audit and that to go over it a second time would not be a basis of an objection to this, and that they should make this available.

The client made one or more accounting personnel available on a continuous basis to the auditor. We had Mr.

Doyle with the auditor for I believe several days—was it? going through every thing and anything he wanted as to the then recent period of '67 and '66, and also on a selected basis whatever he wanted on the past period.

This included, so far as I know, the following documents: The fuel contracts between Shell and United and all of the amendments reaching from 1953 on; the lease agreement between Shell and United and some amendments—seven amendments to it.

**THE COURT:** What was leased?

**MR. BERENS:** Some facilities at O'Hare Field.

(Continuing)—the invoices from Shell to United; the payment records from United to Shell of these invoices; the delivery receipts from Shell to West Shore Pipeline in Indiana showing the quantities delivered; the orders from United to [139] Shell for the different shipments and the similar orders by United to West Shore for arranging the shipping on the common carrier line. We tried in all of these documents for the auditor to his satisfaction, we thought, showing that there was no delivery, but more importantly in the context of this argument, that there was no change during this whole period, and in particular, no change since the stipulation had been entered into.

We think that the state initially had—had full access to these records; we offered at the time of the stipulation to make anything available to them. We have since, without any attempt to harass or inhibit them before this court, let them reaudit the documents. We have made everything available at length to them, and we think that if a stipulation should be binding under these circumstances, where all the facts were made available at all times to them, where we gave up an interlocutory appeal at an economic cost to ourselves at the express request of the state to enter into the stipulation, that the stipulation should stand, and I would like to make a couple of concluding comments.

I am in the position of implying that [140] there is something wrong with the delivery situation, possibly; we do not think this. We think this is an extremely remote possibility. In fact, I might characterize it from what we can see, this theory is frivolous, but nonetheless, this is a risk and—at least a theoretical risk.

Now, let's assume that there is something wrong with the delivery for the moment, as an assumption. For two years since the stipulation, or for four years since the first proposed assessments, we would have been able to do something about it and correct it, so that we would not be exposed to any liability on the R.O.T. issue at this time; but on the contrary, we have been relying, first of all, on the inaction of the state in proposing any assessment on this basis, but more pertinently, on their specific stipulation with us for a consideration that delivery—the facts of delivery were not part of this issue.

Now, if the court would admit this evidence and we would be subjected to liability, we will have two years of reliance, almost to a point of entrapment—although I don't like to use that extreme term.

[141] We also have another problem with this. If this is an R.O.T. assertion or the equivalent to it, a use base tax based on delivery, the statute of limitations of three years, reaching back to July 1, '63, should have expired on a good portion of the earlier term of this. This statute has been tolled by the pendency of this litigation under the usual rule; however, we will have the strange effect of the statute being tolled as to the R.O.T. issue, because we have a litigation on an entirely different question, whether loading fuel aboard aircrafts is a taxable use. And for that reason, we think that it would be unfair and unjust to our client to permit the state to contradict what they stipulated to us—with us, as to this delivery.

**MR. CAMPBELL:** Counsel assumes the state wants to contradict, Your Honor. I think counsel used the expression yesterday "to put some flesh on the stipulation," on which they consumed an entire afternoon. Counsel also—I don't know anything, personally, about the dismissal of the interlocutory appeals that was based upon this stipulation. I know nothing about this personally. But in any event, the tax liability here arises by virtue of [142] the statute. So that insofar as the reliance of the plaintiff here, he is no different than any other taxpayer. Now, the plaintiff drew the stipulation, The plaintiffs prepared the stipulation. The state officials executed the stipulation. The plaintiffs were more familiar, of course, with the facts of their own operations than were the officials of the state.

We feel that—again, to be fair to the court, that all of the facts should be before the court, since they are seeking an exemption based upon certain facts.

Now, from counsel's remarks, they are unwilling to produce these witnesses to be examined to see whether the stipulation as entered into is true or whether it is untrue.

In January, 1966, we entered into the stipulation. I think about three weeks ago, at counsel's office, at the time of a deposition involving the Shell Oil Company, one of the defendants in this case, it developed that the fuel upon arriving in East Chicago and in Hammond is transported by way of the West Shore Pipeline, in which one of the defendants or both have an interest. [143] It also developed that the storage facilities in Des Plaines, Illinois, are owned by one of the defendants here, Shell Oil Company. It also developed that there is a Lockheed, I think, Terminal Air, Inc. that also one of the defendants has an interest in, transporting the fuel from Des Plaines to O'Hare Field.

These are matters that we think the court should be apprised of as to the connections between these defendants, because by virtue of the statute if a taxable event occurs in

the State of Illinois prior to the departure of the plane, we think the statute applies. And again, since the plaintiff here, by virtue of a class action, we think the court ought to be apprised of the facts relating to this particular delivery system, and this is what we seek by virtue of this motion, and if in fact it has taken the plaintiff by surprise, we have no objections, Your Honor—

THE COURT: He says he is not raising that.

MR. CAMPBELL: All right. We have no objection, then, if the plaintiff has any serious objection to this motion, then, Your Honor, we would respectfully decline to say that we feel that the [144] facts have changed subsequent to the entry of this stipulation, to ask the withdrawal of paragraphs 5, 6, 7 and 8 of the stipulation, if the plaintiffs are unwilling to produce a witness who would testify as to the matters relating to the delivery system.

THE COURT: Well, it seems to me that whatever your purpose is in calling an officer of this corporation, I think you have a right to have them here. Then depending on what the line of interrogation is, then the court can determine whether or not it is proper. It seems to me that if there is a change in the situation which was not known to one of the parties at the time—or I don't mean change, I am a little ahead of myself, either a change in the factual situation has developed since the time the stipulation was entered into, or some facts that were not known to one of the parties, I think that is one of the exceptions that you have here, then they have a right to at least by way of further development or explanation, or something of that nature—perhaps the choice of language is not the best here, to develop. But there isn't any doubt in my mind, if they want an officer of this plaintiff corporation, they are entitled to have [145] them here.

MR. BERENS: We have no objection, as we said, to the subpoena to produce a witness.



**THE COURT:** I am not even sure they have to subpoena him. I think you are required to produce them.

**MR. BERENS:** Well, we are willing to produce him.

**THE COURT:** All right, I am sure you are.

**MR. BERENS:** All right.

**THE COURT:** But I just didn't want any misunderstanding—

**MR. BERENS:** I would like to add just one or two comments, if I may, in response to Mr. Campbell. First of all, I am surprised that he doesn't remember the agreement to withdraw the appeals for the stipulation. There were three of us in our office—

**MR. CAMPBELL:** I am not denying that. This may have been worked out with Dick Michaels in the appeals division. I wasn't in on the conferences, that is what I am saying.

**MR. BERENS:** I didn't mean with Michaels. We had a meeting the Friday before this was entered into, and that was one of the conditions. And, Cal, you [146] may remember after reflecting on it, you were present, and Roger Barrett, Bruce Hoff and myself of our office were present. But—

**MR. CAMPBELL:** I don't remember.

**MR. BERENS:** But it was for us a very important meeting at the time. But I would also like to emphasize—and I would like to offer this memo of law to Your Honor, that the case law in Illinois is very clear that these rules regarding standing by a stipulation applies equally to the state.

I mention this because Mr. Campbell has indicated that this is a tax case and that if a tax is due it should be collected. Apparently, the rules of orderly procedure of court and that parties agree to stipulations supercedes that concept.

I would like to mention one other thing, if we get into this delivery question, in addition to what we have called the basic question of whether the loading of fuel aboard an aircraft is a taxable use, we are going to very substantially

not only lengthen and complicate the trial, but we are also going to—if I may be so bold as to suggest it, complicate the problem that Your Honor [147] will have in making the resultant rulings that will be appealable, and I think we will be almost certainly back and forth between the Supreme Court on new trials, and so forth, with all of the possibilities that we have here among the issues.

Mr. Campbell also mentioned the class suit problem. We made the allegation for a purely defensive reason of not getting involved in a group of other class suits, which had been filed on the so-called trucking area at the same time. This is a class—possibly it is a class of one taxpayer of which no one else can belong. United is the only taxpayer who is buying fuel from Shell Oil under the conditions that have been alleged in the complaint, and as has been stipulated; so I think this class suit question doesn't advance the basic issue.

**THE COURT:** Well, I don't know about whether it is a class suit or not. Of course, that isn't really of any great consequence now. There is a question of whether or not the state has a right to seek to introduce evidence which is beyond the terms of the stipulation, and perhaps in contradiction of the terms of the stipulation, I don't know. I assume from the statement by each of you that that [148] may be the fact.

**MR. BERENS:** I am sorry, Your Honor, that which may be the fact?

**THE COURT:** That the evidence which the state produces—seeks to produce, would be in contradiction of the stipulation?

**MR. BERENS:** Yes.

**THE COURT:** I don't know. Whether it relates to something that is beyond the subject matter of that covered by the stipulation, these things I don't know; and I have no way of knowing anything until the person is produced, as

to what he is going to be asked, and whether or not it is relevant or pertinent in asking him these questions and for him to answer these questions. It seems to me that—I don't like to prolong these things any more than anyone else does, because time never frightens me.

Off the record.

(Discussion had off the record.)

THE COURT: We will meet, then, these questions that are now raised as they come before us; perhaps we may never—they may never appear. We have had that kind of thing happen. I think you have some other evidence, and I want to get on and hear it. [149] But as far as the Plaintiff's motion is concerned, I think that at some time in this proceeding that you will be required to have an officer of this plaintiff corporation here.

MR. BERENS: Well, we will have him here, and we will raise our objections at the proper time.

THE COURT: Then we will cross that when we come to it.

\* \* \*

[153] Mr. Stark, would you take the stand, please.

(Witness sworn.)

THE COURT: All right.

JOHN HENRY STARK, SR.,

called as a witness on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. HOFF:

Q. Would you state your name, please?

A. John Henry Stark, Sr.

Q. S-t-a-r-k?

A. Correct.

Q. Where do you live, Mr. Stark?

A. 33 Forest Avenue, Roselle, Illinois.

Q. And by whom are you employed?

A. United Air Lines.

Q. What is your title or position with United Air Lines?

A. My title and position with United Air Lines is Director of Petroleum Administration.

Q. Very generally, Mr. Stark, will you tell us what your duties and responsibilities are as [154] Director of Petroleum Administration?

A. My principal responsibilities are those of negotiating fuel purchase agreements for United Air Lines, and lesser responsibilities are in the area of leasing both fixed and mobile facilities to handle these fuels that are purchased, together with the purchase of all petroleum products required for the operation of United.

Q. Mr. Stark, are you familiar with the amount of Indiana gross income tax United incurs on the turbine fuel and aviation gas purchased from Shell at East Chicago, Indiana?

A. I am.

Q. Can you give us the amount of that tax from July 1, 1963, through December 31, 1967?

A. It is of the magnitude of \$402,000.

May I refer to my notes?

THE COURT: This is from July what?

MR. HOFF: July 1, 1963 through December 31, 1967.

Q. If you made a note of that—the exact figure, Mr. Stark, I think you may refer to it.

A. Thank you. The amount was \$402,842.95.

Q. Do you have an estimate of what the tax [155] liability for the Indiana gross income tax will be for United during the year 1968?

A. Yes, it will be of the magnitude of \$150,000.

MR. HOFF: That is all the questions I have.

## CROSS EXAMINATION

BY MR. CAMPBELL:

Q. Mr. Stark, does the plaintiff, United Air Lines, pay any sales or use tax in any other state on the purchase of the aviation fuel?

MR. HOFF: What aviation fuel, Your Honor?

THE COURT: I take it he means any petroleum.

MR. CAMPBELL: Yes, that is involved in this lawsuit.

THE COURT: Any petroleum.

THE WITNESS: Would you state your question again, Mr. Campbell.

MR. CAMPBELL: Would the reporter read the question.

(The question was read.)

THE WITNESS: Fuel involved in this lawsuit?

MR. CAMPBELL: Q. Aviation fuel that is involved in this lawsuit?

A. No, sir.

[156] Q. In other words, they don't pay any sales or use tax in any other state, and they don't pay the State of Illinois, is that correct?

MR. HOFF: Well, of course—

MR. CAMPBELL: Q. On the purchase of this fuel?

A. Well, we are purchasing the fuel in Indiana, Mr. Campbell, and we are paying the gross income tax in Indiana.

Q. You pay that to Shell or direct to the State of Indiana?

A. The gross income tax is added to our invoice by Shell.

Q. You pay it to Shell?

A. Yes, sir.

Q. You don't pay it to the State of Indiana?

A. No, sir; we pay an inspection fee of some small magnitude.

Q. This income tax of the State of Indiana, is this a tax



on United Air Lines, or a tax on Shell Oil Company, if you know?

A. I believe it is a tax on Shell Oil Company, and we reimburse them for this tax.

. . .

[158] MR. CAMPBELL: Q. Would you explain the procedures involved in the purchase of aviation fuel from the defendant here, Shell Oil Company?

MR. HOFF: Well, now, Your Honor, this is the subject—in addition to the fact that we still believe it is beyond the scope of the direct, this is the very subject which Mr.—this goes to the delivery—the delivery facts, the delivery question. It is the very subject on which we just had the long argument.

THE COURT: That's right.

[159] MR. HOFF: And we submit that any question along these lines represents an attempt to go behind the stipulation to contradict the stipulation. We object to it on those grounds.

MR. CAMPBELL: We submit, Your Honor, that the witness has testified that he is the Director of Petroleum Products and we would like to know what this includes.

MR. HOFF: Well—

MR. CAMPBELL: Apparently he is a substantial employee of the plaintiff company here, and I feel that in order to elicit what his duties and what his functions are that this is proper; and these are matters that also—as I indicated, again, the plaintiff drew the stipulation, because they are more familiar with the facts than the State of Illinois officials, and I feel that in all honesty we have the right to go into the matter, and to ask the court to determine whether these are in fact the facts or not.

MR. BERENS: I think, Your Honor, there is one other element here. Not only do we have the question of going beyond the scope of the direct examination at this time, but plus our fundamental question. We [160] have, I think, a

further question. I said we would not contend surprise. But I didn't expect that we would put a witness on for one thing and then have the court allow the state to go beyond the direct.

THE COURT: Well, I think you may have a point there, counsel. I said that I didn't expect you to produce somebody in 15 minutes. I also said—I believe I said something to the effect that I could give you some time, too.

MR. BERENS: We don't want much, but a little more time because of the way this has developed.

THE COURT: And I want a little time to do a little thinking myself, too.

MR. BERENS: All right.

(Short recess had.)

THE COURT: I believe there was an objection?

MR. HOFF: Yes.

MR. CAMPBELL: Yes, Your Honor.

MR. HOFF: A pending question and a pending objection, I think.

THE COURT: Yes; please read the question.

MR. BERENS: And we objected for the three grounds of being beyond the—

THE COURT: One ground was it was beyond the [161] scope of the direct examination?

MR. BERENS: Yes, coupled with this, at the moment, is the surprise question.

THE COURT: A surprise question?

MR. BERENS: Well, surprise—I say, coupled with that, beyond the scope of the direct examination, is the question of surprise, that of producing a witness who is able to answer these questions immediately. We said we could do it promptly, but not in a few minutes.

THE COURT: Well—

MR. BERENS: And finally, as our basic objection—

THE COURT: To some extent I am in sympathy with

you along that line. On the other hand, somewhere along the line, perhaps not today—and I took a quick look at your memorandum of authorities, and there is some basis for your objection. One of the things that I am not familiar with in any way, except that the papers are in the file, is the notice of appeal, and things of that nature—notice of appeal?

**MR. BERENS:** Yes.

**THE COURT:** And the basis of dismissing or [162] withdrawing one of the appeals, I don't know how they terminated, whether they were dismissed, and perhaps you can enlighten me on that, I don't know.

**MR. HOFF:** If the court please, they were dismissed. I handled that, prepared the papers, and therefore I know. We don't have them here in court, but we could produce them. I drew an agreed order, one for each court, because we had appealed to two different courts; and it was signed by myself, as attorney for United, and Mr. Campbell, as attorney for the state, and by Mr. Rall as attorney for the Shell Oil Company; and pursuant to those two orders, the appeals in the Appellate and in the Supreme Court were dismissed by the court.

**MR. CAMPBELL:** You mean Dick Michaels. I wasn't there.

**MR. HOFF:** Oh, conceded, yes. Yes, Dick Michaels, because it was the appeals section of the Attorney General's office we were concerned with. You are absolutely correct; you are absolutely correct.

**THE COURT:** So what other consideration there was for that, I am not familiar with it at all, or [163] whether if by virtue of that it places you in some prejudicial position.

**MR. BERENS:** Well, we are hardly in the position, Your Honor, to ask for leave to re-establish the appeals.

**THE COURT:** No, of course you are not, can't do that.

MR. CAMPBELL: Just to make a remark—

THE COURT: That I will agree on.

MR. CAMPBELL: —whatever happened on the interlocutory appeals, from those orders, could not serve the purpose to exempt—to grant an exemption to the taxpayers if the statute provides that they are taxable; so that the statements of counsel insofar as the basis for any dismissal of an appeal, could not serve to excuse a clear mandate of a statute, provided they are taxable.

MR. BERENS: Well, the standards that the courts have imposed on litigants in civil litigation is that in the absence of fraud or a mutual mistake, or changed circumstances—

THE COURT: Or public policy?

MR. BERENS: I don't believe the courts have raised that, but possibly we have overlooked one.

[164] THE COURT: I think I got that in your brief.

MR. BERENS: —that the parties must stick with their stipulation.

MR. CAMPBELL: Even if it means forgiving taxes?

MR. BERENS: Well, life must go on. We can't continue this forever and ever.

THE COURT: Well, you are asking me for a determination—

MR. BROMBERG: We think there is a mistake of fact here—or an absence of fact.

THE COURT: —and I am inclined to do this. I am not going to compel you to proceed, when you say that this matter comes as a surprise, and I can see where it does—

MR. BERENS: Only in the—

THE COURT: —I am inclined to allow this evidence, and at some time if you can—if I am convinced later on, if you can convince me, that I am in error I will strike it. But I have got to go on and get through with this lawsuit; sometimes we never get through.

. . .

[168] JAMES K. GOODWINE, JR.,

called as a witness on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BERENS:

Q. Would you state your name, please?

A. Yes, James K. Goodwine, Jr.

Q. Would you spell your last name?

A. G-o-o-d-w-i-n-e.

Q. What is your address, Mr. Goodwine?

A. 8 Elkin Court, San Rafael, California.

Q. By whom are you employed?

A. United Air Lines.

THE COURT: What city?

THE WITNESS: San Rafael, R-a-f-a-e-l.

[169] THE COURT: All right.

MR. BERENS: Q. Would you give us your educational background.

A. Yes, I have a Bachelor of Science Degree in Mechanical Engineering from Purdue University, which was granted in 1952; a Master of Science in Mechanical Engineering in 1956 and a Ph.D. in 1960. My graduate degrees are also from Purdue University.

Q. Is your Ph.D. in mechanical engineering?

A. It is in mechanical engineering, that is correct.

Q. Are you engaged in the full time practice of engineering?

A. Yes, I am.

Q. For how long, approximately, have you been so engaged, Doctor Goodwine?

A. Since roughly 1954, that would be not quite fifteen years.



**Q.** Would you give us a brief resume of your professional experience as a practicing engineer?

**A.** Yes, I will. In graduate school while working on my doctorate degree, I was on the research staff of Purdue University for one year and an instructor in mechanical engineering, specifically [170] fluid mechanics for two years after that. Upon receiving my Ph.D. degree, I was employed by the Chevron Research Company. This is a subsidiary of the Standard Oil Company of California, their research labs; and for the past seven months I have been employed by United Air Lines.

**Q.** Your work with Chevron Research Company, could you describe that in some brief detail, please?

**A.** Yes, I will. While I was at Chevron, I was assigned to the engine fuel section. For my nearly eight years there, I spent about five years in what was termed fundamental combustion studies. These embraced a wide range of theoretical oriented studies of fuels and combustion processes.

For the latter part of my career there, I was engaged in studies and research on aviation and diesel fuels. With the aviation fuels, this was primarily thermostability, and with the diesel fuel problems, primarily in low temperature operation.

**Q.** Would you give an explanation in terms that a layman can understand what you mean by thermostability of fuels?

**A.** All right. This is a—the behavior of fuels under a high temperature environment. This [171] would be temperatures above 300 degrees, which are typical of those encountered by the fuel in the engine environment in jet aircrafts.

**Q.** What is your present position with United?

**A.** At the present time I am a staff engineer. I am in the performance and development section; that would be the mechanical engineering division of the engineering department of United.

**Q.** What do your present professional duties basically involve?

**A.** We have a rather wide range of assignments in this particular group. With respect to my own work, I am primarily engaged in the applications of fuels in engines. In other words, the interactions of the two fuel problems as they pertain to engine operations.

This leads us into such things as air pollution, which is one of my prime responsibilities; and of late, I have also been getting into some material studies in turbine engine construction, somewhat different.

**Q.** Do any of your present projects for United involve the effect of temperature on fuel?

[172] **A.** Yes, they do. As part of our studies of fuel, we are engaged in setting and determining meaningful specifications. These include the ability of the fuel to withstand, say, low temperatures, so we are actively engaged in studying the low temperature environment of jet fuel on aircraft.

**Q.** Do you have any specific projects in process or have you completed any—I will rephrase that question.

Have you completed, or do you have any specific projects in process regarding the effect of low temperatures on fuel?

**A.** Yes, we do. At the present time we are interested in determining whether our present freezing point specification, an important item between the fuel consumer and the fuel supplier, is at an appropriate level. In order to accomplish this, we have two programs going. One of these consists on all DC-8 and 720 flights of the crew recording the temperature in the fuel tank at the point of descent. Now, this is the point at which the aircraft starts to descend, which normally is the lowest temperature that the fuel would experience during that flight.

[173] This data is being handled on a computer compilation program, it is a large volume data. In addition to that,

we have on one aircraft a continuous record of the fuel temperature while the aircraft is in flight. This is a flight type recorder, which continuously reads on a chart the temperature of the fuel in the tank.

Q. You mentioned that these studies involve low temperature problems?

A. That is correct.

Q. Would you explain how low temperatures are involved in aircraft fuel?

A. Yes. At the altitudes at which jet aircraft operate, the ambient or outside air temperatures are quite low. These normally run in the order of minus 65 to minus 70 degrees Fahrenheit in the wintertime, and perhaps 10 degrees warmer than that—in other words, minus 55 to minus 60 degrees Fahrenheit in the summertime.

Q. Do you have any data of temperatures incident to the studies of fuel stored on the ground at the time it is loaded into the plane?

A. Yes, we have. We have obtained a limited amount of data in that regard at various stations of [174] interest.

Q. Do these stations include O'Hare Airport?

A. Yes, one of these is O'Hare Airport.

Q. What do the preliminary data concerning O'Hare—what does the preliminary data concerning O'Hare show as to the temperatures of the fuel as it is loaded onto the plane?

A. Generally, we find that the temperature of fuel as it is loaded onto the plane follows rather closely the average ambient temperatures for that time of year. In the coldest month, which seems to be January, these temperatures are about 32 degrees Fahrenheit, they are about freezing, and as the temperature becomes warmer some of these temperatures go up. I would say that the average winter temperature would be about 40 degrees Fahrenheit; the average summer temperature would be about 60 degrees Fahrenheit.

Q. This is in the Chicago area?

A. This is in the Chicago area.

Q. Would you relate in terms of temperature differential, these winter temperatures—winter and summer temperatures of the fuel aboard the aircraft with the winter and summer temperatures of the fuel [175] being loaded onto the aircraft?

A. Yes. A limited amount of data, of which we have gotten on this program I described previously with the temperature at the point of descent and our other recorder studies, which are not complete, by the way, indicate that in the month of January the temperature on board the aircraft when it touches down averages about minus five degrees Fahrenheit. We do not have data for the summer months. I would suspect that this ten degree differential I mentioned previously would still hold, and that in the summertime the temperatures upon touch down in the tank would be about plus five, coupled with our 40 and 60 degree estimates it would give a temperature differential as between the fuel going in and the fuel already on board as the plane lands of say 45 to 55 degrees.

Q. If I understand you correctly, Doctor, you are saying that the temperature in the tank of the plane as it is landing is much colder by these ranges you just mentioned than the fuel that is going to be added to the tanks of the plane?

A. That is correct.

THE COURT: There would be about a 45 degree [176] difference?

THE WITNESS: Right, that's correct.

MR. BERENS: What happens in the fuel tank when the warmer ground fuel is added to a tank containing a much colder fuel?

A. The colder fuel is more dense; that is, it weighs more per cubic foot. A cubic foot of this colder fuel weighs more than a cubic foot of the warmer fuel, therefore, the dense

fuel tends to go to the bottom of the tank and the warmer fuel which is added and is lighter tends to rise to the top of the tank. This leads to a stratification where we have low temperature fuel on the bottom of the tank and progressively higher temperature fuel on the top.

Q. You referred to a stratification, would this be a series of layers of temperature, from the colder to the warmer, from the bottom to the top?

A. Yes, it could be thought of in that sense. Certainly, the coldest fuel is at the bottom, the warmer fuel is at the top, and they could be defined in terms of layers, although these layers may not be very distinct in some cases.

Q. Is there any scientific data available [177] as to the change of weight, or I should say, density of the fuel over changes in temperature?

A. Yes, this is fairly common data and could be obtained from any petroleum supplier. Memory tells me that for density changes you get about a five per cent change with a hundred degree Fahrenheit change in temperature, rule of thumb.

Q. Well, would that interpolate so that a change of fifty degrees Fahrenheit would represent an increase in weight of about two and a half per cent?

A. Yes, that would interpolate and would be about two and a half per cent.

Q. Is the fuel loaded into the aircraft always warmer than the fuel already on board?

A. In nearly all cases that would be the normal operation.

THE COURT: This is in jets, I take it? Or is it on all planes?

THE WITNESS: It would be true to a limited extent on a piston aircraft, but since they operate at a lower altitude, the difference would not be as great.



**MR. BERENS:** Q. Directing your attention to the fuel lines on jet aircraft that run from the tanks [178] on the aircraft to the aircraft engines, at what point in the tanks do the fuel lines come in?

A. This varies from aircraft to aircraft, but generally, they are on the bottom surface level of the tank.

Q. You say "generally." On what type of tank would not the fuel line be on the bottom?

A. I can't conceive of that.

Q. What does the fact that the exit point of the fuel tank to the engine—I would like to rephrase that question.

The fact that the exit point from the fuel tank to the engine is on the bottom, what does that indicate in terms of this stratification of the colder from the warmer fuel?

A. Well, this would indicate that the first fuel burned on, say, take off would be the colder fuel, that which is located at the bottom of the tank.

Q. Are the fuel lines from the tanks to the engine fed by gravity or are they pressurized by a fuel pump?

A. In all commercial aircraft, they are pressurized by a fuel pump.

**MR. BERENS:** That is all I have.

[179] **MR. BROMBERG:** If the court please, I move that all of the testimony of this witness be stricken as not relating in any way to any of the issues in the case.

**THE COURT:** Motion will be taken under advisement.

### CROSS EXAMINATION

**BY MR. BROMBERG:**

Q. Doctor, you say generally the fuel in the tank on touch down goes to the bottom of the tank. Are these cases where it doesn't?

A. The fuel that is in the tank on touch down will, of course, be on the bottom of the tank. This would be a layer of fuel. With respect to the argument, we were differentiating that fuel from any fuel subsequently added.

Q. Well, the point is that the fuel that is already—that is added is added from the top, isn't that right?

A. No, that is not correct.

Q. At what point is it added into the tank?

A. Fuel is added into the tank at the bottom on commercial jet aircraft.

Q. Well, now, when the fuel is added, does it push up the fuel which is already in the tank?

[180] A. It will disturb it to some extent; that's right, it has got to displace that which is immediately over the point of which the fuel is entering.

Q. In other words, then, the new fuel displaces the old fuel and it is the new fuel which is on the bottom, is that right?

A. It moves it out, so it can move up—

Q. Right. And since the fuel comes out of the tank to the engine from the bottom, it is the new fuel that is going into the engine and not the old fuel, isn't that correct?

A. No, that is not correct.

Q. Well, will you please differentiate between the two and how it works?

A. Well, I thought we did that.

Q. Outside of the temperature aspects—I am talking about the physical displacement.

A. All right. The reason for the physical displacement is that cold fuel wants to be on the bottom of the tank, the warm fuel wants to rise. An analogy might be you light a cigarette and the smoke goes up, it displaces air on either side of it, but the smoke goes up and where the smoke ends up is on the top of the room, and I think the same situation [181] applies here. Certainly, where this pipe comes in and the old fuel is lying on top of the pipe, for new fuel to enter it has to be pushed out, it would tend to be pushed sideways, not up and the new fuel then will rise as a column through the old fuel and end up disbursed over the top of the tank.

**Q.** Well, isn't it a fact, Doctor, that the new fuel and the old fuel is intermingled?

**A.** There is bound to be some degree of mixing, that is correct.

**Q.** So there is no definite way of determining which goes into the tank—into the engine first, whether it is the old or the new, or parts of the old and the new, is that correct?

**A.** The coldest fuel will be going into the engine first.

**Q.** You say it was comingled to some extent?

**A.** Yes.

**Q.** That would mean that part of it would represent the new fuel going in as well, isn't that right, if it is comingled?

**A.** As I envision the situation, we have a layer of very cold fuel at the bottom of the tank. Then we have a second layer, which is comingled fuel [182] of some unknown depth. At the top we have a layer of the most warm fuel. The first fuel out is the coldest fuel and the fuel which most likely—or is the fuel that was left over from the previous flight.

**Q.** Well, Doctor, I don't want to belabor the point, but the fact is when we spoke about comingling, there isn't specific layers that are definable by instruments, are there, layers that are developed between the old and new fuel?

**A.** They could be determined by gradations.

**Q.** But you say that they have been comingled to some degree?

**A.** Yes.

**MR. BROMBERG:** That is all.

**THE COURT:** Doctor, let me ask you, I take it, then—

**MR. BERENS:** If Your Honor please, one moment—

**THE COURT:** I wanted to ask some questions.

**MR. BERENS:** I thought you were dismissing him.

**THE COURT:** —then when the jet plane takes off, it takes off on the cold fuel?

**THE WITNESS:** Yes.

**THE COURT:** Eventually, the warm fuel, when it gets to this cold altitude will become cold?

[183] **THE WITNESS:** That is correct.

**MR. BROMBERG:** There was one more question we omitted.

**Q.** Is there any difference, scientifically, between the cold fuel and the hot fuel mixing as there would be between cold water and hot water?

**A.** In layman's terms, I would say no. If you wanted to belabor the point, water is a simple fluid, fuels are not.

**MR. BROMBERG:** I think we got the answer we wanted.

**MR. BERENS:** No further questions, Your Honor.

**THE COURT:** You may step down.

(Witness excused.)

**MR. HOFF:** If the court please, we would like to file—a week ago last Friday, we served on the state a request for admission, requesting them to admit that they—that the Department of Revenue had issued no published rule, regulation, bulletin, ruling or other document which interprets or applies the Illinois use tax in the manner similar to that applied by this bulletin.

I would like to file that request for admission with the court at this time; and I think—[184] I guess Mr. Campbell has something that he wants to file in response.

**MR. CAMPBELL:** We have objections to the request, Your Honor, which we ask leave to file.

**MR. HOFF:** Well, I don't know how we could have possibly made the request for admission any more explicit than we did.

**THE COURT:** I am trying to find something around here. I am out of a clerk. It seems to me, I would like to mark these files so that when I start digging them up later

I will find out when was this done; when was this done. See if I can find a clerk around here.

(Short interruption.)

MR. HOFF: Well, Your Honor, they say that it is vague and ambiguous.

THE COURT: Well, let's have a look at it then.

All right.

MR. HOFF: I don't know how it could have been made more explicit, have they ever issued a rule, regulation, bulletin, ruling or other documents that interprets or applies the Illinois use tax to tangible personal property in a manner similar to the bulletin which is involved in this case. It speaks for itself. [185] either they have or they haven't. If they have, we assume that they are going to tell us what it was. If they haven't, why we assume that they will admit the request. They say it is improper. I don't know what that means. They also say it is irrelevant. Well, of course, it is relevant to our contention that this is a discriminatory application of the use tax.

If they can point to no other item of tangible personal property to which they have applied the tax in a comparable manner, why that would certainly support our charge of discriminatory interpretation.

THE COURT: Well, I don't know, I think I perhaps understand Mr. Campbell's position that in the first place he doesn't agree with you on the fact that it is purchased outside of the state, brought into the state and temporarily stored here and then used partly inside and partly outside of this state—I think it is perhaps the language that Mr. Campbell objects to?

MR. CAMPBELL: Yes, it goes on and on. Perhaps if it stops where counsel has just quoted, we may have been able to comply with this request.

[186] MR. HOFF: Have you issued—maybe I should just ask the question of counsel. Has the state issued any other



comparable bulletin applicable to fungible tangible property?

**MR. CAMPBELL:** There we go again, Your Honor; and the tax liability here, if any, arises by virtue of the statute, not by virtue of any bulletin, not by virtue of any rule or regulation but by virtue of the statute. The rule—

**THE COURT:** Well, of course, there was a change in 1963?

**MR. HOFF:** There certainly was.

**THE COURT:** In the regulations?

**MR. CAMPBELL:** No, Your Honor, the bulletin itself on its face recites that this is an effort to clarify the position of the department. It is not a rule, it is not a regulation; but it did have the effect of affecting, perhaps, let us say, an entire industry. This is, of course, the reason for the injunction that you entered yesterday so as to remove the prior period from any consideration whatsoever, so that only the prospective period was involved; and the basis by which the department of revenue is operating is the statute and not by virtue [187] of any rule or regulation or bulletin, but the statute itself.

**MR. HOFF:** Well—

**THE COURT:** Well, as I understand, Mr. Hoff, in my perhaps poorly chosen language, that you mean has the state by a rule or regulation in connection with any other tangible personal property changed its position that a portion of it at one time was subject to the use tax, and then later it took the position that all of it was? Am I getting reasonably close to your point?

**MR. HOFF:** Well, Your Honor, close, yes. Maybe I don't—

**THE COURT:** I feel good.

**MR. BROMBERG:** He wants it on the button.

**MR. HOFF:** There certainly was a change here; and we complained about the fact that there was a change, among

other things, but also we contend that the state by this bulletin is applying the use tax to fuel used by air lines, railroads and other types of transportation companies in a manner different than they apply it to any other type of tangible personal property—fungible tangible personal property. Now, if they can point their [188] finger at any other item of fungible tangible personal property that they tax in a manner similar to this, we want them to do it. If they don't, if they can't point their finger, why we want their admission to the effect that they can't point to any comparable interpretation or position that applies this tax. We are entitled to defend ourselves against liability from this tax on the grounds that it is discriminatory and that is the issue to which this request is directed.

**MR. CAMPBELL:** Counsel is pleading—or being inconsistent if he is alleging that they are taxable and that the tax is not being applied to other similarly situated, then this is inconsistent with the pleadings that have been filed here, because the very purpose of their pleadings and their position has been that they are completely exempt.

Now, counsel is taking the position that they are—if I understand him correctly, that he is now saying the plaintiff is now taxable, but that the tax is not being applied to others in a uniform manner.

**MR. HOFF:** The difficulty—

**MR. CAMPBELL:** It appears that this is [189] inconsistent with the position that he has taken.

**MR. HOFF:** The—

**MR. CAMPBELL:** Secondly—

**MR. HOFF:** Excuse me, I am sorry; I thought you were done.

**MR. CAMPBELL:**—counsel speaks about fungible tangible personal property. I have been in this field a while, this is the first time that I have heard this expression, when United filed this suit, and I am certain that it does not ap-

pear any place in the rules or regulations of the Department of Revenue. We do have Mr. Corrigan who is head of the rules and regulation department of the Department of Revenue, and we have conversed in an attempt to answer this admission, if we were sure of what counsel is seeking.

MR. HOFF: Well—

MR. CAMPBELL: We are not aware of personally—I don't think he is aware of any such additional bulletin that we think that counsel has reference to, and I am personally not aware and I don't know that this would satisfy counsel or not. But—the department, of course, has issued numerous rules and regulations under the use tax act since—

[190] MR. HOFF: You say you are aware of no other bulletin comparable to this one?

MR. CAMPBELL: I am not personally aware of any.

MR. HOFF: Well, does—

MR. CAMPBELL: Here is Mr. Corrigan.

MR. HOFF: Well, is Mr. Corrigan aware of any comparable—

THE COURT: If Mr. Corrigan isn't aware of them, nobody is.

MR. CORRIGAN: Thank you, Your Honor, I am glad to hear that. No, I am not aware of any; but I would say that it has always been our position that when the temporary use ended, then the use—the taxable use began here in the state, assuming that it ended in the state. Therefore, the question—there would have been no call for any other—any additional bulletin or anything of that nature. And in this instance it appears that the air lines were taking advantage of perhaps—at least this is our contention, of lack of knowledge on the part of the department, that we were even allowing the exception in the first place; when our Director of Revenue at the time became aware of the situation he immediately [191] ordered the issuance of this particular bulletin to clear up the discrepancy, and we

have made the—we have agreed to the injunction here so that they would not have suffered retroactively because of the misunderstanding.

As a matter of fact, what happened is that they had to clear—in effect, a practical matter was that they had an exemption, now we are claiming that they no longer have the exemption. Our contention is that there was discrimination in their favor. Previous to that time—

MR. BERENS: Well, I think we are getting now into the basic issue of the case. Our request for admission is a little more narrow than that, if I may suggest. Now, we have trouble on whether it is fungible or the definitions of terms, but what we contend is a discriminatory application, and, therefore, evidence that their interpretation of the law may be contrary to the law. Maybe I can bring this out by an example. A building contractor buys a load of bricks in Indiana, delivery stipulated to being in Indiana, and brings them to a construction site here where he himself is the converter into real estate, he brings a load of twelve thousand [192] identical bricks, dumps them on the construction site, figuring he is going to use all twelve thousand.

In the course of the construction his plans change and he uses eight thousand bricks, converting it into real estate, and therefore, a taxable use under the rules as I understand it; he takes the other four thousand from the construction site and hauls it off to Wisconsin for a new job. As I understand it, that would not be taxable according to the published interpretations of the department; that would not be taxable, let me make that clear, the four thousand that were hauled away.

We think that our situation of the fuel that we bring in from Indiana and that we store in the ground at O'Hare for a while and then put aboard the plane, some of which we burn in Illinois, but most of which, which we put aboard

here, is from any view point going to be consumed somewhere else in this country. We think that is identical to the brick situation.

They say in our case that a partial use in Illinois, that is, part of the fungible bulk made the whole fungible bulk taxable. We say we [193] are not different from the bricks, or I can give examples of coal or other types of fungible things—flour, cereal. And we have alleged in our complaint and it was denied in their answer that this is a discriminatory interpretation, and therefore, a wrong interpretation. We have to prove that. We have the burden of proof on that because it was denied in the answer. And we don't know, frankly, how we can go about proving it except by going to the people in the department who know how they are interpreting the law, unless you are willing to take judicial notice that there is no other regulations and published bulletins analogous to this?

THE COURT: I am afraid I couldn't do that.

MR. CAMPBELL: Regarding the brick situation, I think the state of Wisconsin might have some say so without answering whether Illinois would tax all of the bricks or not; and I think the state of Wisconsin would also have some say so in the four thousand bricks that arrived in the state of Wisconsin; but the air lines completely escape all taxes in every state because it is consumed in the air; so that I think the analogy is not proper.

[194] MR. BERENS: I don't think that is—excuse me, Cal, I am sorry.

MR. BROMBERG: All these regulations that are issued by the Department are published. If there is any regulation, he knows—he just spoke of one, if he thinks it has an analogy to the case at bar he is perfectly at liberty in his closing argument to present all of these things or introduce them in evidence.



**MR. CAMPBELL:** The second point I wanted to make, counsel mentioned the interpretation of the Department of Revenue. First of all, the interpretation of the Department of Revenue might carry some weight, might be persuasive, but the final decision rests with the court as to the interpretation of any statute. And the only thing that has been attempted here is to provide Your Honor with all of the facts so that Your Honor can apply the law. Your Honor can interpret the law, and if the Department of Revenue has had in the past any erroneous interpretation of the law, it is not binding on this court. And this court is the last—

**THE COURT:** I am not liable—

[195] **MR. CAMPBELL:** Yes, the court has the last say. So when it comes to the interpretation of an act, and I repeat, Your Honor, we are not attempting—the department is not attempting to assess the tax here by virtue of a rule or regulation; the authority comes from the use tax act, and the use tax act either imposes the taxable obligation on the plaintiffs here or it does not.

**THE COURT:** And the change in the regulation in '63—

**MR. BROMBERG:** There was no change.

**THE COURT:** Yes, there was.

**MR. BROMBERG:** There was no change, Your Honor, just a change in interpretation.

**THE COURT:** Well, change—let's not quibble over words.

**MR. BROMBERG:** Well—

**THE COURT:** It is a re-evaluation and a different construction of the statute.

**MR. BROMBERG:** Right, correct.

**MR. CAMPBELL:** We alleged in our answer that it really clarified—

**MR. BERENS:** If I may say, we keep on coming back to the basis issue of the case, and I would like to confine this argument here to the point that we have got to attempt

to prove a negative; and I don't know how we can submit proof that nothing exists. We thought the way to do it originally was interrogatories; the state was very much against answering the interrogatories. We tried working it a different way, that is, by this request for admission and we just can't seem—and you have expressed the opinion a moment ago, that you might have difficulty taking judicial notice that these don't exist. We think that relevant to our contention that this is discriminatory interpretation is the fact that it is a unique interpretation—we don't think that the facts are that unique, that they are not that different from the brick example which, incidentally, if Wisconsin doesn't have a sales tax, would that make a difference in Illinois?

MR. CAMPBELL: Well, we have enough trouble with Illinois.

THE COURT: Substitute Iowa for Wisconsin—

MR. BERENS: But counsel's point whether it is taxable in Illinois should depend on whether it went to Iowa or Wisconsin.

[197] THE COURT: Well, I don't know, Mr. Berens, it seems that each one may present an entirely different situation and factual question. It is easy to separate four thousand bricks out of twelve thousand bricks. Now, I don't know whether you can separate two thousand gallons of gas from ten thousand gallons of gas and retake it out of storage and take it somewhere else. It seems to me that these regulations are public, I am sure. The department, or Attorney General, I am sure, probably would furnish you with all the regulations that are relevant or relate to this particular statute, anything that comes within the purview of the use tax act, I don't know how many there are, I suspect there are quite a few.

MR. BERENS: Well, we think we have them all, but it is the problem of proving the negative.

**THE COURT:** Well, this I don't know. I think that it depends upon perhaps the wording. Now, when you say—

**MR. HOFF:** We will be happy to revise the—I mean, if there is a formulation of the request that would—

[198] **MR. CAMPBELL:** Well, Mr. Corrigan doesn't know of any, I don't know of any. We will be happy to continue the investigation. But I don't know—

**MR. BERENS:** Well, are you making this of record that this is admissible?

**MR. CAMPBELL:** I beg your pardon?

**MR. BERENS:** Are you making this as an admission of record that there isn't any in response to our request?

**MR. CAMPBELL:** No. I say—

**THE COURT:** He said he didn't know of any. He didn't say there weren't any. He said he or Mr. Corrigan didn't know of any.

**MR. HOFF:** Mr. Campbell and Mr. Corrigan have looked and they haven't found any!

**MR. CORRIGAN:** Your Honor, part of the problem here, I submit, is that the language is so broad that I am not sure of what they want; so I am not certain in my own mind of the existence or non-existence of them, because I don't know what existence they are talking about, really.

**THE COURT:** It is a little difficult, Mr. Berens and Mr. Hoff—

**MR. CAMPBELL:** This is why the interrogatories—

[199] **THE COURT:** —“tangible personal property purchased outside this state, brought into this state and temporarily stored here and then used partly inside and partly outside this state in a manner equivalent or similar to the interpretation expressly limited to motor fuel.” That puts

quite a burden on them to try to determine if they are similar, equivalent to—

**MR. BERENS:** Well, I think as you and Mr. Campbell pointed out, Mr. Corrigan is the expert here, certainly it is less burdensome on him than it is on us. We are practicing attorneys; we are not specialists.

**MR. CORRIGAN:** I would request, Your Honor, that as attorneys that they be requested by you to make themselves clear. This is the trade of attorneys, to express themselves clearly.

**MR. BERENS:** All right, we can cut this short and see if we can reach some agreement that we can get the request we want to you in a way that you feel is clear enough so you can answer. Can we try to work this out?

**THE COURT:** I believe, Mr. Berens—I am not an expert in this field, by a long ways, but [200] I would have a little difficulty answering this, believe me.

**MR. HOFF:** We will see if we can work out some other formulation.

**THE COURT:** I think it can be boiled down to inquire of the department to answer the attorneys for the parties—answer it yes or no. I have an idea what you are seeking.

**MR. HOFF:** Yes.

**THE COURT:** And I think it would be helpful here, it would save a lot of time and trouble, too. Both of you have difficulties, too. Probably he can answer it yes or no.

Now, do you want to just hold these before we file them—

**MR. HOFF:** Well, why don't we leave them on file and perhaps we will file some sort of an amendment.

**THE COURT:** All right, put them in the file.

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[207]

EDWIN D. MAXFIELD,

a witness called by the defendant herein, under Section 60 of the Civil Practice Act of Illinois, having been first duly sworn, testified as follows:

### EXAMINATION

BY MR. CAMPBELL:

THE COURT: Your first name, Mr. Maxfield?

THE WITNESS: Edwin D. Maxfield.

MR. CAMPBELL: Q. Where do you live, Mr. Maxfield?

A. I live at 4 Woodland Road in Old Westbury, New York.

Q. And your occupation?

A. I am manager of aviation sales for the United States, Shell Oil Company.

Q. How long have you been so employed?

A. As manager of aviation sales?

Q. Yes?

[208] A. For the U.S. only since the first of the year, as far as the United States is concerned. However, I have been in aviation sales since 1946.

• • •

[212] MR. CAMPBELL: Q. What is the source of this fuel, Mr. Maxfield?

A. The source of the fuel is East Chicago, Indiana.

Q. Where does the fuel come from prior to East Chicago, Indiana?

A. Well, our crude is brought from, essentially, West Texas and Oklahoma to Wood River, Illinois, where we have a refinery that refines this crude into the fuel that is delivered to United Air Lines at East Chicago.

Q. The fuel is processed and refined at Wood River, Illinois, is that correct?



A. That is correct.

Q. Now, how does it get to East Chicago, Indiana?

A. By a 250-mile products pipeline to East Chicago.

Q. And these pipelines are owned by whom?

A. By the Shell Oil Company.

[213] Q. Now, when the fuel arrives at East Chicago, Indiana, what takes place there?

A. It is stored and it is settled until a request for delivery from United Air Lines.

Q. How often do you receive requests from United Air Lines?

A. Generally once a month, we receive a request from their agent at our East Chicago terminal, outlining the shipments that are to be made for the next month.

Q. Where is this agent located?

A. At Lockheed Air Terminal, and they are located at O'Hare Field.

Q. And this is the agent of United Air Lines?

A. Yes.

Q. They place the request with you for fuel?

A. That is correct.

Q. Does United Air Lines have any employees, to your knowledge, at your East Chicago, Indiana facilities?

A. No, they do not.

Q. Now, when you received a request—or [214] you receive a request once per month, I believe you stated, approximately how many gallons of fuel would this involve, on an average?

A. On the average about 18 million gallons of turbine fuel to be delivered, generally speaking, three times during the following month.

Q. Now, is United Air Lines the only air line that you service at O'Hare Field?

A. We don't service any air lines at O'Hare Field. We deliver it at the East Chicago terminal to United and to American Air Lines.

Q. Only those two?

A. We do have some other air line accounts that we deliver gasoline to, aviation gasoline, at East Chicago.

Q. Would that be from the East Chicago facilities, the same fuel?

A. Yes, sir—it would be aviation gasoline.

Q. And this would be delivered from the facilities at East Chicago, Indiana?

A. That is correct, sir.

Q. What are the names of these air lines?

A. I am not sure that I can name all of them. [215] One of them is Delta Air Lines; one of them is Lake Central Air Lines. I believe that is all.

Q. Where do you deliver the fuel to Delta Air Lines?

A. At East Chicago, Indiana.

Q. Where do you deliver the fuel to Lake Central Air Lines?

A. At East Chicago, Indiana.

Q. Does the delivery of the fuel follow the same pattern for Delta and for Lake Central as in the case of United Air Lines and American Air Lines?

A. You mean insofar as our facilities are concerned?

Q. Yes?

A. Yes.

Q. Does American Air Lines have any employees at your East Chicago, Indiana facilities?

A. No, sir.

Q. And nor does Delta or Lake Central?

A. No, sir.

Q. Now, what happens to the fuel—you spoke about 18 million gallons of gasoline, of [216] gas aviation fuel per month, on the average?

A. Yes, sir.

Q. What happens to the fuel when it leaves East Chicago, Indiana?

A. We are directed by United's agent to deliver it to the West Shore Pipeline meter station at Hammond, Indiana.

Q. Do you know who owns the West Shore Pipeline?

A. I know there are ten owners.

Q. Would you name those, please?

A. I am not sure—if I could refer to notes, I could name all of them.

There is Shell, there is Mobil Oil Company, there is American Oil Company, the Humble Oil Company, Pure Oil Company, Clark Oil Company, City Service Oil Company, Texaco, Marathon and Continental Oil Company.

Q. What interest does Shell own in the West Shore Pipeline?

A. Twenty per cent of the stock.

Q. Now, prior to your delivery of the fuel to the West Shore Pipeline, do you bill United Air Lines for the fuel upon the arrival in East [217] Chicago, Indiana, at that juncture?

A. Well, you say prior. I am not sure that I understand you. When it is delivered to Hammond—to the West Shore meter station it is then billed to United Air Lines.

Q. Where is the billing sent?

A. The billing is sent to United Air Lines in Des Plaines, their main office is, I believe it is Des Plaines.

Q. Does the Shell Oil Company pay any fees to the West Shore Pipeline?

A. No, sir.

Q. All of the fees to the West Shore Pipeline are paid by United?

A. Yes, sir.

Q. Do you know how that billing is determined?

A. No, sir, I don't.

Q. By owning 20 per cent, do you have any directors

on the West Shore—does Shell Oil Company have any directors on the West Shore Pipeline?

A. Yes, sir, we have one.

Q. Do you have any officers?

[218] A. No, sir.

Q. Now, upon your delivery of the fuel to the West Shore Pipeline, do you insure this fuel at that point?

A. No, sir. After—you mean after it is delivered to the meter station?

Q. Yes?

A. No, we do not insure it.

Q. Now, once the fuel is delivered to the West Shore Pipeline, what happens to the fuel after that point, if you know?

A. Well, it is my understanding of the situation that United, or the West Shore Pipeline delivers it to United Air Lines at Des Plaines.

Q. Are you familiar with the procedure that is followed at the end of the journey at Des Plaines?

A. Not very familiar; I have never seen the procedure, no.

Q. Would these be described as the storage facilities in Des Plaines?

A. Yes, sir.

Q. And who owns the storage facilities in Des Plaines?

[219] A. The Shell Oil Company.

Q. Do you know whether Shell—or would you describe the storage facilities at Des Plaines?

A. There is several tanks—well, first, coming from West Shore Pipeline, there is a line leading from the West Shore Pipeline to the facilities which I believe is a sixteen inch line, about a thousand feet; there are several tanks; there are pumps; there are filters and a small pump house, and there are two six inch lines running from that facility over to the edge of O'Hare Field. These are all leased by the Shell Oil Company to United and American.

Q. When was the lease that you referred to entered into?

A. I believe in December of 1959.

Q. Does United pay rent to Shell Oil Company for the use of the facilities at Des Plaines?

A. Yes, sir.

Q. How is that rent determined?

A. That is determined by a through put fee.

Q. Would you explain that, please, for [220] the benefit of the record.

A. This is a common usage in the oil industry to determine rent of facilities. In other words, it is on the basis of the volume put through the facilities and the rent is determined in that way.

Q. How often is the rental paid for the use of those facilities?

A. I believe once a month. I don't honestly recall what the period is, but I believe it is once a month.

Q. Do you have a written contract—a written lease?

A. Yes, sir.

Q. Does the—I am not certain whether you said several tanks or seven tanks?

A. Several; several tanks.

Q. What is the capacity of the tanks?

A. I am sorry, I don't have those records right with me. I can—

Q. Now, is it my understanding that you service—how many airlines are serviced from the seven or several tanks at Des Plaines?

A. Only American Air Lines and the United [221] Air Lines.

Q. From what source are the air lines, Delta and Lake Central, serviced?

A. They engage a common carrier to pick up products at the East Chicago terminal.

A. Are these trucks?



A. Yes, sir; transportation trucks.

Q. Does American Air Lines have any employees at the Des Plaines storage facilities?

A. They retain an agent or have a contract with Lockheed Air Terminal to manage the facilities at Des Plaines.

Q. But as far as you know, United Air Lines does not have any employees at your Des Plaines storage facilities?

MR. BERENS: I object to the use of the phrasing that Shell services the customers at O'Hare, this last phrase here of "your storage facilities." It has been established that these are leased facilities.

THE COURT: Well, perhaps the language—

MR. CAMPBELL: He said they owned—Shell Oil Company owned the facilities.

THE COURT: Read the question again, please.

[222] (The question was read.)

MR. BERENS: Your Honor, we think—

THE COURT: At your Des Plaines storage facilities, which is owned by Shell and leased to American and United?

MR. BERENS: Yes.

THE COURT: All right, answer that question.

THE WITNESS: United Air Lines also with American Air Lines engages the Lockheed Air Terminal Corporation to manage the Des Plaines facilities.

MR. CAMPBELL: Q. These are employees—I again repeat the question, does United Air Lines have any employees at your Des Plaines storage facilities?

A. I really don't know whether they do or not.

Q. Do you know whether American Air Lines has any employees at your Des Plaines storage facilities?

A. No, I do not know.

Q. Now, I believe you stated that the fuel that was removed from the storage facilities is for United and American Air Lines?

[223] A. The storage facilities where?

**Q.** In Des Plaines?

**A.** United and American do store their fuel there, yes.

**MR. BERENS:** Object to the question. His testimony had established that it was owned at that time by United and American Air Lines. The question says the fuel that was for United Air Lines. Again, this whole line of questioning is ignoring the answers, and implying a different set of facts than were testified to.

**THE COURT:** Well, let's hear the question again.

(The question was read.)

**THE COURT:** What is your objection to that question?

**MR. BERENS:** Well, he stated—he quoted the witness, Your Honor, saying that the witness had stated that the fuel at Des Plaines was for American and United. The witness had already testified that the fuel was owned by American and United and had been in their possession since some time in Indiana. This is a whole series of [224] questions—

**THE COURT:** Well, I don't read that into the question. But just so we don't get the record confused, I will sustain the objection; and to clear the record, ask a new question, Mr. Campbell.

**MR. CAMPBELL:** **Q.** When fuel is—when you receive an order from American Air Lines for the purchase of fuel, you receive this order in East Chicago, Indiana?

**A.** That is correct, sir.

**Q.** Where does that fuel go, does it go to Des Plaines, the storage facilities?

**A.** It depends on where American or Lockheed, as their agent, direct us to load. In other words, it could be that they have directed us to turn the fuel over to West Shore Pipeline at Hammond, Indiana, or in some cases they may send a common carrier truck in to pick up the fuel there and I presume that they could take that either to Midway Airport or to O'Hare Airport.

**Q.** Maybe I didn't make myself clear. I believe that you testified that the storage facilities owned by Shell Oil in

Des Plaines are [225] leased to United and American Air Lines, is that correct?

A. That is correct.

Q. And—

THE COURT: Together with the pipelines?

THE WITNESS: Together with the pipelines; it is all what we call facilities.

THE COURT: Yes, okay.

MR. CAMPBELL: Q. Fuel is stored there for the use of both air lines, is that correct?

A. Fuel is stored there by United—fuel owned by United and American is stored there.

Q. All right. Now, when you mentioned several times—does United keep their fuel separate and apart from the fuel belonging to American?

A. No, they do not.

Q. The fuel is comingled?

A. That is correct.

Q. Now, while the fuel is being held in the Des Plaines facilities, does Shell pay—Shell Oil Company pay the insurance while the fuel is in Des Plaines?

A. No, sir.

[230] THE COURT: All right, Mr. Campbell, where is the witness who was on the stand?

MR. BERENS: Your Honor, I would like to make a preliminary statement to the Court.

THE COURT: Yes.

MR. BERENS: We would like to withdraw our objection to the admissibility of the State's evidence on this delivery question. I have discussed this with Counsel. Mr. Corrigan and I had a discussion last summer, from which he believes this evidence should be admitted. There is no question in my mind as to how tightly the State should be bound by the stipulation on this point. I don't agree with

his memory of the discussion, except I believe that his memory is what he thinks it is, and so we are going to clear this difficulty out.

THE COURT: Very good.

MR. BERENS: I would like to make it clear, Your Honor, that we are reserving the legal arguments not on admissibility, but on the entrapment and the extension of the statute of limitations.

THE COURT: Very well. With that understanding, we will proceed.

[231] Q. Now, on the original facilities in East Chicago, Indiana, can you tell us approximately how long the fuel remains in the storage facilities in East Chicago, Indiana, prior to transporting the same to Des Plaines, Illinois?

A. I would say probably an average of about ten days, ten to twelve days.

Q. And the distance from Wood River, Illinois, [232] to East Chicago, Indiana, can you tell us the approximate distance?

A. About 250 miles.

Q. Now, can you tell us what percentage of the fuel that is refined in Wood River, Illinois, is purchased by United Air Lines?

A. That will vary from 70 to 80 per cent.

Q. And would this indicate that the remaining 20 per cent is purchased by American Airlines and Delta, and other airlines you referred to?

A. No. What I was saying is that about 20 to 30 per cent of the fuel that is brought up to East Chicago actually comes out of Gulf Refineries in Louisiana and in Houston.

Q. Of the fuel that finds its way to the storage facilities in East Chicago, Indiana, what percentage of that fuel is purchased by United Air Lines?

THE COURT: You mean all the companies, the other ones that he just mentioned?

**MR. CAMPBELL:** Beg pardon?

**THE COURT:** You mean all the fuel that comes from places other than Wood River, that includes [233] those, too?

**MR. CAMPBELL:** No, Your Honor, I am trying—I will strike that question and rephrase the question.

**Q.** Of the fuel that is stored in East Chicago, Indiana, what percentage of that fuel is purchased by United Air Lines, if you know?

**A.** About 40 per cent, I would say.

**Q.** How much is purchased by the American Airlines?

**A.** About 30 to 35 per cent.

**Q.** Would it be true that United is your largest customer of the fuel from East Chicago, Indiana?

**A.** That is correct.

**Q.** I don't think we established yesterday that the West Shore Pipeline is considered to be a common carrier?

**A.** That is correct.

**Q.** So that anyone may avail themselves of the service, provided the tariff is paid?

**A.** That is right.

**MR. BERENS:** Your Honor. I don't want to [234] interrupt your questioning, Counsel, but I think the witness is being confused by the use of the word "fuel" here.

If we could use turbine fuel, and so on . . . I'm not sure whether he is answering questions as to total fuel processed through East Chicago, including motor fuel and diesel fuel, and so on.

**THE COURT:** It might be well to straighten it out.

**MR. CAMPBELL:** All references are to aviation fuel unless otherwise indicated.

**MR. BERENS:** Aviation fuel again has two categories: Turbine fuel and aviation gas. Are you referring to both together?

**MR. CAMPBELL:** They would be grouped together and—



MR. BROMBERG: Off the record.

THE COURT: I think it would be well if you straighten it out.

THE WITNESS: I'm not sure I can recall these figures.

MR. CAMPBELL: Q. Would you indicate for the purpose of the record the types of aviation fuel [235] that is purchased by United from the storage facilities in East Chicago, Indiana?

A. Yes, they buy turbine fuel, which is essentially kerosene, and then they buy 100 octane aviation gasoline.

Q. Can you tell us which fuel is used for which planes, if you know?

A. Yes, of course, the turbine fuel is used for the jets, and the aviation gasoline is used for the piston engine airplanes.

Q. Now, the figure, I believe, you mentioned yesterday was 18—approximately 18 million gallons of turbine fuel.

A. Sold to United.

Q. Per month?

A. Right.

Q. What would be the approximate cost of this fuel in terms of dollars?

A. Can I use my slide rule?

Q. Yes.

MR. BERENS: Counsel, I hate to interrupt you, but when you said "cost," you mean selling price to United or cost to Shell?

[236] MR. CAMPBELL: Selling price to United.

THE WITNESS: It would be approximately \$1,700,000.

MR. CAMPBELL: Q. One million seven hundred thousand?

A. Let me see if I have my decimal points in the right place.

Yes, that is approximately. I can't give it to you—

Q. \$1,700,000 per month. Would this include the—is this just for the turbine or does it include the other fuel for the piston engine?

A. This is the turbine.

Q. Just for the turbine?

A. Yes, sir.

Q. Now, how many gallons approximately per month are purchased for the piston engine airplanes?

A. This is going down all the time as they get rid of piston engine airplanes, and I don't honestly know the number—the volume at this point.

• • •

[242] Q. Under the terms of the lease, if you know, are the two airlines—that is, United Air Lines and American Airlines—obligated to purchase Shell fuel in order to use the storage facilities at Des Plaines, Illinois?

[243] A. We have the right under certain circumstances to cancel the lease if it isn't Shell fuel going—if it isn't fuel purchased from Shell going through there.

Q. Do you lease the entire facilities—do you lease the entire facilities owned by Shell Oil Company located at Des Plaines, Illinois, to either United or American Airlines?

A. Well, there are two terminals at Des Plaines on adjoining properties. There is the one terminal that is leased to United and American Airlines, and there is another terminal completely separated that is owned and operated by Shell for motor gasoline, fuel oil, and so forth.

Q. Would that include any aviation fuel, the second terminal that you just—

A. The second terminal does include some aviation fuel which is bonded turbine fuel and it has just been put in there.

Q. What use is made of that turbine fuel?

A. This is for international flights, flights going outside of the country. It is brought into the country in bond.

[244] Q. Which airlines use that fuel, if you know?

A. Lufthansa, BOAC, Scandinavian Airlines, essentially all of the—all of the international carriers at O'Hare.

Q. This is the fuel located in the second terminal which is sold by Shell Oil to the airlines that you just mentioned?

A. Yes, sir.

Q. Where does that fuel come from?

A. That comes from—

Q. The source of that fuel?

A. That comes from Curacao. That is an island off of Venezuela.

Q. Is there any Shell aviation fuel delivered to Argo, Illinois?

A. No, sir.

Q. Are there any other types?

A. You mean Shell's terminal at Argo?

Q. Yes.

A. No, there is not.

Q. Shell does have a terminal at Argo, Illinois?

[245] A. Yes, sir.

Q. Are any fuels delivered from East Chicago, Indiana, to Argo, to your terminal at Argo, Illinois?

A. Not that I know. Most of them come directly from Wood River.

Q. To your knowledge, is there any further processing or refinement—refinement of the fuel after it reaches Des Plaines, Illinois?

A. No. The airlines—it depends on what you mean by "refining and processing."

The airlines mainly run quality control checks and filter the fuel to take out any extraneous material that may have gotten into it in pipeline shipment.

Q. Do you know who performs those tasks, whether it is the airlines or whether it is the—

A. It is the airlines' agent, Lockheed Terminal.

Q. Now, Mr. Maxfield, would you explain the procedure for the withdrawal of the fuel from the storage facilities at Des Plaines, if you know?

A. I'm sorry. I don't know. We don't operate that terminal.

[246] Q. According to Defendant's Exhibit No. 1, does the lease include certain pipelines running from Des Plaines, Illinois, to O'Hare Field?

A. Yes, sir, they do: Two six-inch pipelines.

Q. And they are leased by Shell Oil?

A. To the airlines.

Q. To United and American Airlines?

A. That's right, that's part of the facilities.

Q. I believe yesterday you were not certain as to the capacity of the storage facilities at Des Plaines in terms of the number—let us say—gallons or barrels that the leased facilities could hold.

A. No, they are outlined in the lease.

Q. Could you take a look at this lease and tell the Court the capacity?

A. There is two 120,000-barrel tanks; two 112,000-barrel tanks, and two 2,000-barrel tanks.

Q. Just for the record, how many gallons are there to a barrel?

A. Forty-two gallons.

[247] Q. Forty-two gallons. Are you generally familiar with the storage facilities there, the physical structure?

A. Generally, yes.

Q. On the two 120,000-barrel tanks, is there—strike that.

On the two 120,000-barrel tanks, would fuel in both tanks belong to United and to American Airlines?

A. Yes, sir.

Q. In other words, United Air Lines does not use one tank completely and American Airlines does not use one tank completely?

A. No, they do not.

Q. Then would it follow that the fuel contained in any of these tanks at any time is owned by both United Air Lines and the American Airlines?

A. I would say that would be a fair statement; yes, sir.

MR. HOFF: Could I hear the answer?

(Answer read.)

MR. CAMPBELL: Q. Are you in any way familiar with what happens to the fuel after it leaves [248] Des Plaines, Illinois?

A. Well, in general, but not specifically. I don't know all of the operations specifically.

Q. Would you tell us what you do know about the fuel after it leaves Des Plaines, Illinois, from the stored facilities there?

A. Well, of course, it is transported over these two six-inch pipelines to O'Hare Field and the airlines have storage on O'Hare Field which is divided into what they call the primary storage. And from the primary storage then it is transported by pipelines down to what they call satellite storage which is just off of the aprons at the terminal. And then from there, why, there is a pipeline or hydrant system running around the various terminals, where they load the airplanes.

Q. Are all of these pipelines owned by Shell Oil—

A. No, sir.

Q. —up to the point of—

A. Only to the edge of O'Hare Field, from Des Plaines to the edge of O'Hare Field. From there on, we have no interest in the equipment at all.

. . . .

[254] Q. Can you trace the delivery of the fuel for the piston engines to O'Hare Airport for the benefit of the Court?



A. Yes. United Air Lines send their common carrier truckers into our East Chicago Terminal and take delivery there, and then the common carriers deliver to O'Hare Airport.

Q. Do you know the names of the common carriers?

A. Generally speaking, it is Rogers Cartage that comes in to East Chicago.

Q. Does Shell Oil have any interest in Rogers Cartage, if you know?

A. No, sir.

Q. Do you know whether United has any interest in Rogers Cartage?

[255] A. I do not know whether they do or not.

Q. On the sale of the fuel for piston engines, Shell does not collect any use tax on these purchases?

A. No, sir. You mean from United Air Lines?

Q. Or American.

A. Well, American, we don't sell any gasoline—aviation gasoline to them.

Q. So this only applies to United?

A. Yes, sir.

Q. Now, when the fuel is withdrawn from the storage facilities at O'Hare Field, are you familiar with the manner in which the fuel is withdrawn from the storage facilities at O'Hare Field?

A. Well, generally, I have seen—I have seen the operation there. I am not involved in it in any way.

Q. You spoke about certain, I believe, pipelines and hydrants.

A. Yes, sir.

Q. That the fuel eventually finds its way into the plane.

A. Yes.

[256] Q. Can you explain how that is done, if you know?

A. Well, it is pumped in the pipeline from the primary storage down to satellite storage off the apron. Then it is

pumped from there through the hydrant systems into the hydrant systems and what they call a hydrant car is attached to that pipeline and also attached to the airplane and delivery is made by that method.

Q. Would this be Lockheed performing these functions, if you know?

A. Lockheed I know performs part of the functions, and I believe United performs part of the functions. But I'm not completely familiar of who does what.

Q. Do you know whether the fuel that finds its way into the airplane is in any way metered at that point?

A. Yes, I believe it is.

. . .

[258] Q. Do you sell aviation fuel to United Air Lines for flights out of Midway Airport?

A. Yes, sir. In that case, they pick up the fuel at East Chicago by a common carrier.

Q. What is the name of the common carrier?

A. Generally speaking, it is Rogers Cartage that picks up the fuel.

Q. Does Shell Oil use any trucks to transport aviation fuel to Midway?

A. No, sir.

Q. Does Shell Oil use any of their trucks to transport fuel on to O'Hare Airport sold to United Air Lines?

[259] A. No, sir.

Q. Is any fuel sold from Argo, Illinois, to Midway Airport to any of the airlines using Midway Airport?

A. Well, there is some motor gasoline and some fuel oil sold to the airlines, yes.

Q. On those transactions, do you collect the Retailers' Occupation Tax?

A. Yes, sir.

MR. CAMPBELL: One moment, please.

Q. Is there any processing of the fuel in East Chicago, Indiana?

A. No refining, processing. We settle the fuel in storage there because there is always a certain amount of contaminants that are taken as it is shipped up a pipeline and we settle it out and, of course, filter it.

Q. Now, just to review a part of your testimony, you have indicated that upon the receipt of the purchase order from Lockheed in your East Chicago, Indiana, premises, the fuel is delivered to the West Shore Pipeline.

A. The meter station at Hammond, Indiana, [260] yes.

Q. Yes, and that is located in Indiana?

A. That is correct, Hammond, Indiana.

Q. And the fuel is then transported to Des Plaines, Illinois, and to the premises that are owned by Shell Oil Company; is that correct?

A. The Des Plaines facility is owned by us and leased to the airlines; yes, sir.

Q. And also Shell Oil has pipelines that run from the Des Plaines facilities, I believe you—

A. They are part of the Des Plaines facilities, the pipelines to the edge of O'Hare Airport.

Q. Yes. So that apart from your contractual obligations, it would be possible for Shell Oil to deliver this fuel physically to O'Hare Airport, would it not?

A. Sure, it would be physically possible, yes.

• • •

[264] MR. CORRIGAN: Q. Mr. Maxfield, I show you Page 2—this is Defendant's Exhibit for identification No. 1, the lease which we are discussing, and I ask you to read to the Court the line section near the bottom of the page.

A. (Reading) "Except when and to the extent that Shell has consented otherwise in writing, the premises shall be used only for the storage and handling of—"

Q. That's "consented," isn't it?

[265] A. "Consented." I'm sorry.

"... Shell has consented otherwise in writing that the premises shall be used for the storage and handling and the pipelines only for the movement of aviation fuel purchased and received from Shell Oil at East Chicago, Indiana, herein called (Shell's aviation fuel), except when otherwise expressly specified lessee's obligations under the lease shall be joint and several."

. . .

[268] MR. CORRIGAN: Q. You said that Pure had been a major supplier previously, had you not?

A. They had been a supplier. I wouldn't say "a major supplier."

Q. Until about when?

A. I believe they lost their contract about two years ago. I can't say exactly.

Q. Now, you have testified that not all of the fuel which is sold to United and American is refined at Wood River, is that correct?

A. That is correct.

Q. You have testified, I believe, that a portion of the fuel which is delivered—or is transported across the Shell pipeline from Wood River has been refined elsewhere; is that correct?

A. That's right, in Louisiana and in Houston.

Q. How is it delivered to Wood River from those locations?

A. By barge.

Q. It is then entered into the pipeline at [269] Wood River, is that correct?

A. That is correct.

Q. How is it segregated from the fuel which is refined at Wood River?

A. It isn't segregated.

**Q.** It is shipped in conjunction with the Wood River refined fuel across the pipeline, is that correct?

**A.** Yes, sir, that's right.

**Q.** And then it is stored, this fuel is all stored together at East Chicago prior to delivery to wherever it is delivered at least prior to sale to United and American; is that correct?

**A.** That is correct.

**Q.** Then it is not identifiable as a separate—as separate fuel from the Wood River refined fuel at any time subsequent to entering into the pipeline, is that right?

**A.** No, I wouldn't say so.

**Q.** Now, you mentioned the settling process which takes place at East Chicago. That is not a part of a processing, is it? That is simply—

**A.** No, this is just a quality control.

. . .

[274] **EDWARD D. MAXFIELD**

was thereupon called as a witness on behalf of the plaintiff, having been previously duly sworn, testified further as follows:

### DIRECT EXAMINATION

**BY MR. BERENS:**

**Q.** Is it correct that as a result of your duties, you are familiar with Shell's refining facilities, pipelines, and delivery terminals in this country relating to turbine fuel and aviation gas?

**A.** Yes, sir.

**Q.** Directing your attention to the turbine fuel that has been under discussion here, could you identify the ultimate origin of that fuel in terms of where it comes from?

**A.** Well, in so far as East Chicago is concerned—



Q. Yes.

A. —the crude is taken out of the ground, of course, in West Texas and in Oklahoma. It is transported up over crude pipelines from there to Wood River. At Wood River, it is refined, put in [275] storage and then it is pumped by 250 mile Products Pipeline up to East Chicago; that is, part of the fuel. About 20 to 30 per cent is the crude that comes from either the Louisiana offshore wells or some Texas wells into refineries in either Houston or Norco. It is refined there into turbine fuel, stored, and then put into barges and shipped up the Mississippi River to Wood River, where it is there put into the storage for pipeline shipment up to East Chicago.

Q. Do I understand correctly that approximately 70, 80 per cent of the turbine fuel that arrives at East Chicago has been refined at Wood River and 20 to 30 per cent either at—or in combination at Houston, Texas, or Norco, Louisiana?

A. That is correct.

Q. The refinery runs at each of these refineries turn out these same specifications of the fuel?

A. Yes, they do.

Q. Do I understand correctly that the fuel from these three sources is commingled at Wood River?

[276] A. That is correct.

Q. Prior to shipment on the pipeline to East Chicago?

A. That is correct.

Q. The 70 to 80 per cent of refinery source at Wood River and the 20 to 30 from these other two sources, does this vary from time to time?

A. It will vary from time to time depending on our manufacturing facilities at Wood River.

Q. Did you state how the crude oil gets from West Texas to Wood River, the portion that doesn't come through Norco and Houston?

A. It comes up by pipeline from West Texas up to Cushing, Oklahoma, by various pipelines—crude pipelines. And then from Cushing, Oklahoma, there are two crude pipelines, one owned entirely by Shell, and another one that is jointly owned with the Texas company that brings the crude from Cushing, Oklahoma, to Wood River.

[280] Q. Does all of the Wood River production go to East Chicago? Does all of the Wood River production of turbine fuel go to East Chicago?

A. No, it does not. We have—we barge some of it up to St. Paul-Minneapolis, and we have what we call our East Product Line runs out to Cleveland, Indianapolis, and Cleveland, and then from East Chicago, we have distribution to—by pipeline over into Michigan and in up into Wisconsin, and, of course, some deliveries by truck into Northern Indiana.

Q. Of the fuel, of the turbine fuel that comes to East Chicago, approximately what—I [281] will strike that.

Of the turbine fuel that comes to rest in East Chicago, approximately what percentage goes to these points like Michigan, and Indiana, and Wisconsin that you just mentioned?

A. Oh, about 12 per cent.

Q. It has been established that the turbine fuel comes from Wood River, the commingled turbine fuel comes from Wood River to East Chicago by pipeline. Would you give the diameter of that pipeline?

A. That's a fourteen-inch pipeline.

Q. And from East Chicago, the fuel goes by pipeline, West Shore Pipeline to the Des Plaines breakout area. Could you give the diameter of that pipeline?

A. That's a sixteen-inch pipeline.

Q. A sixteen-inch pipeline?

A. Yes, sir.

Q. Would it be possible physically and technically to pump from Wood River through your fourteen-inch pipeline on to the sixteen-inch pipeline of West Shore without coming to rest at East [282] Chicago?

A. No, sir.

Q. Would you explain why not?

A. Well, in the first place, it is a different diameter pipeline. There are also—also there are many shippers in West Shore Pipeline and West Shore could not schedule receiving of product at our convenience of the tenders that are shipped over our North Products pipeline. It would be fortuitous if we could pump directly into there. But you could never depend on it, and you will find in any pipeline operation where there is a transfer from one pipeline to another, there are storage tanks there in order to—for it to come to rest so they can schedule it out.

Q. Do you know of any instances anywhere where there is continuous piping from a proprietary line of one diameter to a common carrier line of another diameter?

A. I don't know of any.

Q. Of any kind of fuel, not just turbine fuel.

A. No, I don't know of any.

[283] Q. Would the quality control of this turbine fuel be affected if there wasn't the settling out at both East Chicago and at Des Plaines?

A. Oh, yes. This is very much a requirement as far as handling the fuel to settle it out at each point it comes to rest.

Q. Do I understand then that two settling outs are better than one?

A. Absolutely.

[286] Q. Is it physically possible today to deliver fuel by pipeline—let me restate that.

Is it physically possible today to deliver turbine fuel by pipeline direct from Wood River to O'Hare Field?

A. No, it is not.

Q. Has it ever been possible physically to do so in the past?

A. Not to my knowledge.

Q. Would it be economically feasible now or—

A. It would be—

Q. I didn't finish my question.

A. Oh, I'm sorry.

Q. Would it be economically feasible now or in the future, foreseeable future to deliver turbine fuel from Wood River to O'Hare without it coming to rest at your East Chicago terminal?

MR. BROMBERG: I object, unless the witness will state the foundation, the basis for his opinion.

There has been no foundation laid for it [287] at all.

THE COURT: Objection will be overruled. He has been asked everything he can think of about the operation of this.

MR. BROMBERG: The point is he would be engaging in an answer which he already started to give, what figures would be employed. I mean to give an economic judgment would have to be based on a foundation of figures, none of which have been adduced before this Court.

THE COURT: I think that on the basis of the experience which he seems to have quite a little bit of, he may answer the question, sir.

THE WITNESS: It would require, it would require a large expenditure to extend our pipelines up to Des Plaines. Something over two million dollars would have to be expended to do that.

MR. BERENS: Q. And this would be a duplication of facilities at West Shore or other common carriers now owned?

A. Yes, sir.

**Q.** If you had to spend two million or more dollars to extend your pipeline to the Des Plaines [288] area, in effect, would you have to charge more for the fuel in order to recoup this investment?

**A.** We would have to recoup the investment.

**Q.** In effect then, your airline customers would pay for the extension of the pipeline?

**A.** Yes, sir.

**Q.** Do you have any opinion whether they would continue to be airline customers if they had to pay?

**MR. CAMPBELL:** That we object to.

**THE COURT:** Objection will be sustained.

**MR. BERENS:** **Q.** I understand from your testimony this morning which—strike that.

Your Honor, there was this problem this morning on questions that seemed to be in terms of fuel without distinction from turbine fuel. I would like to spend a little time trying to clarify that.

**THE COURT:** I thought we tried to clarify it a little this morning perhaps.

**MR. BERENS:** My colleagues don't think I succeeded.

**THE COURT:** Go right ahead.

[289] **MR. BERENS:** **Q.** As I understand your testimony this morning, you stated that of all the fuel refined at Wood River, all the products, 40 per cent was ultimately sold to United and 30 per cent to American for ultimate delivery at O'Hare; was that correct?

**A.** Not of all the fuels manufactured at Wood River, but all of the turbine fuels manufactured at Wood River.

**Q.** What is the percentage of the refinery runs approximately at Wood River that constitute turbine fuel?

**A.** Approximately twelve per cent.

**Q.** And the balance is other types of products not connected with aviation gas?

**A.** That is correct.



**THE COURT:** Let me see if I understand. Twelve per cent of Wood River is turbine fuel?

**THE WITNESS:** Yes, sir.

**MR. BERENS:** Q. And the balance of products other than turbine fuel?

A. That's correct.

Q. Then to tie this together once more, 70 [290] to 80 per cent of the turbine fuel that eventually ends up at O'Hare comes from Wood River, and this is 70 to 80 per cent of the 12 per cent of the refinery runs at Wood River?

A. That is correct.

Q. I hope I've got that now.

Do I also understand correctly that this morning you testified that of the turbine fuel that you own at East Chicago derived from Wood River, from Norco and from Houston, that about 12 per cent goes to Michigan, Indiana and Wisconsin?

A. That is correct.

Q. And the balance goes to O'Hare and Midway?

A. That's correct.

**THE COURT:** We have already—I thought it was 82 per cent. Maybe I just—

**MR. BERENS:** I don't know.

**THE COURT:** I am trying to catch up.

**MR. BERENS:** Q. Is 12 per cent the correct figure?

A. About 12 per cent goes to other places other than the two airports—Midway and O'Hare.

[291] **THE COURT:** Okay.

**MR. BERENS:** Q. You also testified that a portion of the turbine fuel refined at Wood River doesn't go through East Chicago at all, but goes to points up the Mississippi.

A. Like Indianapolis, Cleveland, and so forth.

Q. All right, all right. Now, turning for a moment to East Chicago, of the total fuel volume handled there of all fuels, what percentage is turbine fuel?

A. About 30 per cent.

Q. What is the total storage capacity in gallons or barrels for all products, all liquid products at East Chicago?

A. About 2,600,000 barrels, give or take 20,000 barrels. I believe—I believe I have the figures here.

2,629,000 barrels total storage.

Q. And of this figure, how much is for the storage of turbine fuel?

A. 460,000 barrels.

Q. Could you convert that into gallons, that [292] 460,000?

THE COURT: Multiply it by 42, I suspect.

THE WITNESS: That is exactly right. 19,200,000 gallons.

MR. BERENS: Q. Of the turbine fuel at East Chicago sold for eventual use at Midway or O'Hare is all of that sold to United?

A. No, it is not.

Q. About what percentage is sold to United?

A. About 60 per cent.

Q. And the balance of 40 per cent is sold to American Airlines?

A. That's right. There is a small amount sold to the Lake Central also.

[295] Q. Are the shipments to United commingled with the fuel being shipped to American?

A. They are. Maybe I don't understand your question.

MR. BROMBERG: If the Court please, I think the answer was complete there.

MR. BERENS: All right. Prior to the shipment—is it—prior to the shipment to American and United, is the fuel commingled?

THE WITNESS: Yes, it is.

**MR. BERENS:** Q. Does it remain commingled at the time of pumping to West Shore?

**A.** Yes.

**THE COURT:** Do I understand by that, Mr. Maxfield, that if in handling you put in six million to United and four million for American—

**THE WITNESS:** It is a continuous pumping.

**THE COURT:** That's right, like pouring two glasses of water together?

**THE WITNESS:** Right, and, of course, at East Chicago, we don't—it is just one big bowl of [296] kerosene.

**THE COURT:** In other words, it is not divided.

**MR. BERENS:** Q. Prior to East Chicago, is the fuel identified or commingled as to any customer?

**A.** It is not identified as to any customer.

**Q.** This morning you testified, I believe, that on the average, the turbine fuel is in storage in East Chicago ten to twelve days. Is there any variation in this average from time to time?

**A.** Yes, that can vary depending on how full the tanks are at East Chicago when the shipment comes up from Wood River. So that could—I guess we could say that the fuel can be there from anywhere from five—part of the fuel could be there anywhere from five to twenty days.

**THE COURT:** Would it also be dependent on the request from Lockheed to send the gasoline out?

**THE WITNESS:** No, it would depend more on our ability to manufacture it and—because this can vary from time to time and sometimes we run awfully close the way they take this volume.

**MR. BERENS:** Q. When do you receive the shipping orders from Lockheed on behalf of United?

[297] **A.** It's about the tenth of the month preceding the shipments that the—in other words, on February 10, for March shipment.

Q. And this is for the three March shipments?

A. That's correct.

Q. And are these shipments at particular dates of the month?

A. Generally, the 10th, the 20th, and the last of the month.

Q. You said the end of the month. Can I clarify that? Is it the 10th, 20th, and 30th of the succeeding month, or the 1st, 10th, and 20th of the succeeding month?

A. I beg your pardon. It is the 1st, 10th, and 20th of the following month.

. . .

[302] Q. Where does United place the order—orders for the turbine fuel for O'Hare and for Midway? At what office of your company?

A. At our East Chicago office.

Q. Are these orders in writing or orally?

A. The orders—the 10th of the month orders for the following month are in writing.

Q. For the turbine fuel?

A. For the turbine fuel. However, they can be corrected up to the last minute, essentially the last minute before shipment orally, sometimes confirmed in writing, but not always.

Q. So an order of February 10, for March 1, could be corrected any time prior to shipment by an oral correction?

A. Yes, sir.

Q. Are the orders for turbine fuel for Midway placed orally or in writing?

A. I honestly am not familiar with the [303] methods that are used there, but I believe it is orally.

Q. Are the orders for aviation fuel for O'Hare in writing or orally?

A. Aviation?

Q. Aviation gas, yes, sir.

A. I believe that's orally, too.

Q. And aviation gas at Midway?

A. The same.

Q. These are all placed here at your East Chicago office?

A. Yes, sir.

Q. Do these orders specify the quantity to be sold?  
Strike that.

In addition to the quantity to be sold and the date or dates of delivery, do these orders specify the place of delivery?

A. Well, in the case of turbine fuel, they specify delivery to West Shore Pipeline.

Q. And in the case of aviation gas?

A. To the particular common carrier that will be picking it up.

Q. Where?

[304] A. At East Chicago.

Q. At your truck terminal?

A. Yes.

Q. Did you testify this morning as to whether you carry insurance on any of this turbine fuel or aviation gas after it is delivered to either the pipeline or the trucking common carrier?

THE COURT: He did.

THE WITNESS: Yes, I did, and we do not carry any insurance.

THE COURT: I'm sure on the facilities and the buildings.

MR. BERENS: Q. Who arranges, if you know, for the tender of shipment on the West Shore Pipeline Fuel Company for turbine fuel?

A. United Air Lines.

Q. Who is the shipper, if you know?

A. United Air Lines.



Q. Does Shell prepay or otherwise pay for the transportation of the fuel on West Shore?

A. No, they do not.

Q. You testified this morning, I believe, [305] that Shell Oil had one director on the Board of Directors of West Shore Pipeline Company.

A. That's correct.

Q. If you know, how many directors are there of West Shore Pipeline Company?

A. Ten directors.

Q. And you testified, I believe, yesterday that Shell Oil has no nominee officers on West Shore Pipeline Company.

A. That's correct.

THE COURT: That's right.

MR. BERENS: Q. Do you have any—apart from not having officers, do you have any other management responsibility on a day-to-day basis with West Shore Pipeline Company?

A. No, sir.

Q. Do you know who does have the day-to-day managing responsibility?

A. American Oil Company.

Q. Has there been any rotation of this management responsibility since West Shore commenced shipping around the end of 1963?

A. No, there was not.

[306] Q. American has had it from the outset then?

A. Yes, sir.

Q. I believe you established this morning that the aviation gas shipments to O'Hare and to Midway and the turbine fuel shipments to Midway were made by the Rogers Trucking Company.

A. Rogers Cartage primarily this is ...

**Q.** Do I remember correctly that you stated that Shell Oil has no ownership or management interest in Rogers Cartage Company?

**A.** That is correct.

**Q.** Do you know the names of any other of the common carrier trucking companies that may pick up fuel for United?

**A.** No, I do not.

**Q.** On these shipments for—do you know who the shipper is?

**A.** United Air Lines.

**Q.** Do you know who arranges for these shipments?

**A.** United Air Lines or their agent.

**Q.** Does Shell prepay or otherwise pay Rogers for this transportation?

[307] **A.** They do not.

**Q.** Now, has any of this ordering—strike that.

For the turbine fuel, how often do you invoice United in reference to each of these shipments?

**A.** Immediately after each shipment.

**Q.** From which office of Shell is this invoice sent?

**A.** From Indianapolis.

**THE COURT:** Indianapolis?

**THE WITNESS:** Yes, sir.

**MR. BERENS:** **Q.** And it is sent to United where?

**A.** At their main offices in Des Plaines.

**Q.** Do you know whether they pay these invoices as each is sent, or do they accumulate them for awhile?

**A.** I believe they pretty well pay them within ten days after invoicing.

**Q.** Does Shell give them a discount for payment within ten days?

**A.** Yes, sir.

[308] **Q.** Which office of Shell receives these payments?

**A.** I could be corrected on this, but I believe it is in our New York data center where the payments are made.

Q. Referring to your testimony, Mr. Maxfield, as to the ordering procedure, the delivery procedure, the shipping arrangements for all of this fuel—turbine fuel and aviation gas both for O'Hare and for Midway—has any of this changed since July 1, 1963?

A. No, sir.

Q. Has any of it changed since January 19, 1966?

A. No, sir.

MR. BERENS: That is the date, Your Honor, of the stipulation.

THE COURT: I know that.

MR. BERENS: Q. If you know, could you indicate the year in which Shell commenced selling—I suppose it is aviation gas to United for delivery at Chicago Airport?

THE COURT: Wait a minute. Chicago Airport?

[309] MR. BERENS: I will strike that.

THE WITNESS: Or East Chicago?

MR. BERENS: I was having much trouble getting this.

Q. If you know, what year did United start purchasing aviation gas from Shell for this area?

A. I believe it was 1945 or '46. Whether it was '45 or '46, I'm not sure.

Q. And since that date, has the delivery always been from—delivered to United at your East Chicago terminal, as far as you know?

A. No, sir, it has not.

Q. When did they commence—when did Shell commence delivering from your East Chicago terminal?

A. In 1953.

Q. Now, directing your attention, Mr. Maxfield, away from operating procedures to some historical development of Shell's facilities, when did Shell build or acquire the refinery at Wood River?

A. They acquired the Roxanna Petroleum Company, which was operating a refinery in Wood [310] River, about 1916.

Q. Did you say 1960 or 1916?

A. '16, 1916.

THE COURT: I went to . . .

(Discussion had off record.)

MR. BERENS: Q. And the refinery existed at that time?

A. That's correct.

Q. And Shell has operated continuously since?

A. Yes, sir.

Q. In 1916, did Shell have any facilities in East Chicago?

A. No, they did not.

Q. When did they build or acquire those facilities?

A. Well, in 1928, a refinery was built in East Chicago and in—and at the same time or about the same time, why, a crude pipeline from the Wood River area was run up to East Chicago.

In 1938, because of some economic reasons, we decided to dismantle the refinery at East Chicago and concentrate all our refining at Wood River. [311] And the pipeline from Wood River to East Chicago—the crude pipeline from Wood River to East Chicago was converted to a products pipeline.

And after that, East Chicago was used purely as a storage terminal.

Q. So East Chicago has been a storage terminal since 1938, is that correct?

A. That is correct.

Q. And since that time, it has handled—has it handled the full range of petroleum products that you distribute?

A. Yes, sir.

. . .

[313] MR. CAMPBELL: Q. By way of the West Shore Pipeline, it is possible for you to deliver the turbine fuel directly to O'Hare Field, is that not correct, from Wood River?

A. Not on a continuous basis.

Q. Well, the fuel comes to rest in East Chicago, Indiana.

A. That is correct.

Q. And at that point, it still belongs to Shell Oil?

A. Yes, that's right.

Q. And it is possible for you to deliver this fuel from East Chicago, Indiana, directly to O'Hare Field, is that not correct?

A. It would have to come to rest again in a facility like the Des Plaines facility.

Q. Ultimately, you could deliver the fuel [314] directly to O'Hare Field, is that correct?

A. Yes, sir.

MR. CAMPBELL: No further questions.

MR. BERENS: Just one further question, Your Honor.

### REDIRECT EXAMINATION

BY MR. BERENS:

Q. I believe my question was answered. And if it wasn't, I am going to rephrase it.

Can you deliver turbine fuel from Wood River to O'Hare whether through the West Shore Pipeline or elsewhere without having it come to rest at East Chicago?

A. And my answer was that we couldn't.

Q. You could not?

A. Could not.

. . .

[321]

JOHN H. STARK,

was thereupon called as an adverse witness under Section 60 of the Civil Practice Act, having been previously duly sworn, was examined and testified as follows:

. . .

[323] Q. Can you tell me if United Air Lines has any



employees at the storage facilities in East Chicago, Indiana?

A. We do not.

Q. Do you know if United Air Lines pays any sales tax to the State of Indiana on the purchases of the fuel that is involved in this lawsuit?

A. To the best of my knowledge, there are no sales taxes in the State of Indiana, and I am not [324] familiar with any sales taxes that we pay in Indiana.

Q. Would the same apply for any use tax paid to the State of Indiana?

A. Again, sir, I don't believe there is a use tax. If there is, we have not been paying Indiana a use tax.

Q. Now, the purchase by United of the turbine fuel and the aviation fuel involved in this lawsuit, do you know whether there is a sales or use tax paid to any state on the purchase by United from Shell Oil Company of the fuel?

MR. BERENS: Objection, your Honor. We do not believe this is relevant to the inquiry.

THE COURT: I don't know whether it is or not. Perhaps it might be well to limit it to Illinois. Although, it might be of some relevancy if they paid a tax in some other state.

You mean on the fuel that is purchased in East Chicago?

MR. CAMPBELL: Yes.

THE COURT: Or Hammond, wherever it is?

THE WITNESS: I am to proceed, sir?

THE COURT: Yes.

THE WITNESS: A. In the instance in the State of [325] Illinois we pay the sales tax on deliveries going to Moline, Illinois.

In the instance of fuel going to—I am trying to think of these states one at a time, sir.

In the instance of fuel going to the State of Michigan,

we pay a Michigan state sales tax on the fuel trucked into the Michigan points.

MR. CAMPBELL: Q. Perhaps you misunderstood the question, Mr. Stark.

This only related to the fuel that is purchased from Shell Oil Company and delivered to the West Shore pipeline in Hammond, Indiana.

A. Oh.

The answer then, sir, is that all of the fuel going into the West Shore Pipeline arrives at O'Hare Field, virtually all of it.

Q. There is no sales or use tax paid to any state on that particular fuel?

A. Not to the best of my knowledge, sir.

Q. Would the same be true of the aviation fuel that is delivered by truck from East Chicago, Indiana?

A. That is correct.

. . .

[327] Q. Once the turbine fuel is delivered to the West Shore Pipeline—

A. Yes, sir.

Q. (Continuing)—does United carry any insurance [328] on the fuel while it is in the pipes?

A. No, sir. We are self-insured on product.

However, West Shore is responsible to us as the carrier. The tariff provides that they have to deliver to us substantially the amount of fuel they receive.

Again, I believe Mr. Maxfield brought up the fact, that there is a hard cut. We do not take out of the—at Des Plaines as much as we put in at Hammond, because we want to preserve the integrity and the quality of our turbine fuel. So they cut off on the front end.

If I might give you an example, moving down the pipeline, immediately in the distillate range of fuels, kerosene,

heating oils, numbers 1 and 2, in order to preserve the integrity of our turbine fuel, No. 2 oil immediately precedes our slug or tender of turbine fuel. And immediately behind it is a No. 2 fuel oil introduced by another shipper on the line.

In order to preserve the integrity of this high quality product that we have, there is bound to be a slight amount of interfacial mix as one product pushes the other.

[329] So in order to preserve the integrity here on the front end, we take a cut off the front end of the turbine fuel above the magnitude of 150 to 175 barrels, similarly some off the back end.

Q. This means that the West Shore Pipeline has some type of a credit provision for—

A. Yes, sir.

Q. With United?

A. At the end of the month, West Shore Pipeline credits us. They publish an amount that they pay and they credit us with the amount of fuel that was short on our delivery at Des Plaines as compared to what was introduced at Hammond.

Q. Do you know if you are the largest shipper on the West Shore Pipeline?

A. No, I do not think we are, sir.

There are—

Well, I have no way of knowing, I am not a Director of West Shore. We are a shipper on West Shore. I would think that probably the largest oil company in this marketing area, namely American Oil, would be the largest shipper. But this would be a matter of conjecture on my part. I could not positively state this.

[330] Q. Now, American Air Lines also ships fuel through the West Shore Pipelines, is that correct?

A. Yes, sir, they do.

Q. And both the American fuel and the fuel belonging to United is stored in the Des Plaines facilities?

A. Yes, sir; however, is separately shipped, the two—

Q. Once they arrive at Des Plaines—

A. The two abut each other when they leave the Hammond terminal. United's fuel precedes, American's follows directly behind.

Q. Once they arrive at Des Plaines they are still together?

A. Yes, sir. It is common specification. It is known as U.A.3.

Q. They are the same grade and quality, is that correct?

A. Yes, sir.

Q. And they are stored in the same tank?

A. Yes, sir.

Q. And there is no separation or segregation as to the fuel?

A. It is the same at O'Hare Field, too. Once we [331] get the fuels onto O'Hare Field, even though one oil company may supply—in the instance of American Oil I believe they supply five airlines on O'Hare, all the fuel of all five airlines is co-mingled because it is common specification. And Lockheed Air Terminal, the agent for the airlines, do the accountability as it relates to the receipt of the product for each individual airline and the accountability thereof on for each airline.

Q. So that if I understand you, they are co-mingled, the fuel is—

A. Yes. Once they arrive at Des Plaines, they are co-mingled until the fuel gets downstream to the satellite area. The satellite tanks are located around the periphery of the terminal, and when the fuel flows into the satellite areas, United has satellite areas Nos. 2 and 3. We have 650,000 gallons of storage capacity in that area.

Q. If you will just hold it one moment, we will get to that point.

A. Oh.

Q. I wanted to ask you if by chance United Air Lines, the plaintiff here, has any employees at the Des Plaines storage facilities?

[332] A. No, sir.

We hired Lockheed to act as our agent and perform the necessary services there.

Q. Do you know whether American Air Lines has any employees at the storage facilities?

A. No, American do not either.

We have a contract with Lockheed to perform these services for us.

Q. While the fuel is in the storage facilities at Des Plaines, do you know if United Air Lines insures the fuel there?

A. We are self-insured, sir. However, we do have a blanket policy. If we have a loss of United's—any of United's owned property anywhere over the country, anything over a \$10,000 loss, Employers Group of Boston, I believe is the underwriter, that would protect us over \$10,000.

Q. Do you know if United is responsible for the repairs of the storage facilities at Des Plaines or not?

A. I do know it and we are.

Q. I didn't hear that.

A. I say I do know it and we are responsible, sir.

[333] Q. That is along with American Air Lines, is it?

A. Yes, sir, yes. We paid several thousands of dollars in repairs last year, sir.

Q. Now, would you explain the procedure for withdrawal of the fuel from the storage facilities at Des Plaines, Illinois?

How is this accomplished?

A. Yes, sir.

If you recall, Mr. Maxfield advised that there was approximately 15 million gallons of storage at the Des



Plaines terminal, two 120,000-barrel tanks and two 112,000-gallon tanks.

The 120,000-barrel tanks are used for receipt off the Badger line.

Once the fuel is pumped up into the 120,000-barrel tanks, we go through a quality control—I say we, I am speaking of our agent, Lockheed, goes through a quality control arrangement.

The fuel flows through—well, they are sort of like cream separators. They are called Doore-Clone centrifugers, and the fuel spins through these centrifugers down through diatomaceous clay filters; then through quality control checks. Once through a go-no-go device, another known as a [334] microscan read-out, and once the fuel has passed through this quality control, it is pumped up into the two 112,000-barrel tanks.

It is now ready for its trip down to O'Hare Field.

The fuel is pumped through two 6-inch lines. We have a 100 horsepower pump and a 40 horsepower pump driving the fuel down to O'Hare Field.

Arriving at the edge of O'Hare Field, all of the facilities on the airport itself are owned by the City of Chicago.

We, the signatory airlines, the fourteen signatory airlines, that guaranteed the revenue bond issue of some 8 million dollars to build this system, we have taken a 40-year lease on the facility until the year of 2,002.

The fuel flows into the primary tank farm area. The primary tank farm area has a group of tanks, some are 11,700 barrel, some are 10,300 and the balance of them are 4,000 barrel capacity.

The fuel of American and United comes down the two 6-inch lines into the four 11,700-barrel tanks. Converting that to gallons, it is approximately [335] 2 million gallons.

And as it flowed into the primary tank farm, the fuel again passed through diatomaceous clay and through a

Warner-Lewis filter separator up into the tankage. This tankage is approximately 2 million gallons.

United's daily off-take on O'Hare is of the magnitude of 600,000 gallons per day. American is running about slightly over 300,000 per day. So the 2 million of storage facilities is sufficient for about two days' requirements on the field.

Then downstream of the primary tank farm down to the seven satellites that I told you there were around the periphery of the terminal, we have eight pipelines. In all there are 43 miles of pipe lining on O'Hare, but these eight principal pipe lines run from the primary tank farm down into what is known as the Group 1 manifolding area.

The fire station at the periphery of the airport is where—across from the fire station at the periphery of the tank farm road is this satellite area No. 1. This is a truck fill stand where certain fuels are put into refueler trucks for fueling.

[336] The balance of the fuel is manifolded and goes to the satellite areas. And the seven satellite areas have capacity of about two million gallons.

Q. Of the fuel that is put in the trucks that you just mentioned, the fuel is transported to the planes, is it?

A. In the instance of United, the bulk of the fuel that we put into our aircraft goes down to satellites 2 and 3, this 550,000 gallons of storage I told you of, and it is piped out under the wings of the aircraft and up into the aircraft.

Only out-of-gate position aircraft would be fueled from refueler trucks.

Q. Who do the trucks belong to that you have reference to?

A. The refueler trucks that United uses for aviation gasoline and the one or two that we do have for turbine, if the airplane is out of position, we lease from Shell Oil Company.

• • •

[341] THE COURT: I think the way you phrased the other question, Mr. Campbell, is probably better, having control of it. If you use the word control in the form of the question, all right. Physical possession is a little hard to define.

[342] MR. CAMPBELL: Well, we will withdraw the question.

THE COURT: As Mr. Maxfield pointed out, you do not carry it around with you.

MR. CAMPBELL: We will withdraw the last question.

Q. The control trucks that you spoke about—

THE WITNESS: A. The what, sir?

Q. I believe you mentioned the term control trucks.

A. No, I talked of the hydrant trucks under the wings.

Q. Pardon me.

A. Yes, sir.

Q. Can you explain who is the owner of the hydrant trucks?

A. We, the fourteen signatory airlines.

The fourteen airlines on O'Hare Field entered into a contract in 1958 with Lockheed Air Terminal to operate, manage, do the accountability of fuel and the maintenance of the fuel system.

Lockheed also were charged with the responsibility in that contract to the fourteen signatory airlines to buy the hydrant trucks and provide them to the airlines in order that the airlines [343] might provide their own in-to-plane service.

The trucks were to be amortized over a six-year period of time, and we amortized them this month. So the hydrant trucks are owned by the fourteen signatory carriers as of February.

Q. Sir, do you know if all of the trucks are used interchangeably with the—all of the parties who signed this agreement?

A. Not quite, Mr. Campbell.

Each airline has an assignment of trucks and pays proportionately according to their assignment.

Q. How many are assigned to United?

A. I was getting to that, sir.

We, United, have seventeen trucks assigned to us.

Out of the total of 61 on the field, 53 are on permanent assignment to the involved ten airlines that have the underground systems, the remaining eight are called pool carts and if one of our hydrant carts were to break down, we would phone Lockheed and within fifteen minutes they would deliver a pool cart to us and pick up the disabled cart, taking it back to their headquarters and putting it in shape and then returning it to our [344] service.

Q. Can you tell us the—strike that.

What financial arrangements do you have with Lockheed relating to the fuel that you have—the loading and transportation of the fuel that you have just mentioned?

A. As it relates to United and American, United and American have two agreements with Lockheed. Number one is the Des Plaines agreement, where Lockheed manages, controls and operates the Des Plaines facility for us, and we pay them—we pay them of the magnitude of—jointly, that is, we pay them in excess of \$3,500 a month for managing the Des Plaines tank farm area.

Now, moving down on to O'Hare Field, as it relates to United, American and the other carriers, we, the fourteen airlines, signatory airlines, took a 40-year lease on this 8 million dollar fuel complex of the City of Chicago.

Once we took a 40-year lease, we then appointed—we invited proposal to bid back years ago, and Lockheed by competitive bid became our agent.

We then drafted an agreement with Lockheed [345], for the operation of this system as it related to all the carriers. Then we, the fourteen signatory carriers, sat down and

worked out an arrangement that was called an agreement among participating airlines, where we set up the charges as they related to Lockheed's operation.

But on O'Hare Field itself, Lockheed are the agents of all of the domestics, plus Pan-Am and Air Canada.

When I speak of the fourteen signatory, I am speaking of twelve domestics, plus Pan-Am, plus Air Canada.

Q. How much is paid for services rendered on the O'Hare complex to Lockheed by United, if you know?

A. Our payments to Lockheed on O'Hare Field are of the magnitude of—I have to draw from memory on this, sir, of the magnitude of a third of a million dollars a year.

Q. That is for United Air Lines only?

A. United only, yes, sir.

Q. Do you know whether United Air Lines pays any of the employees of Lockheed?

A. No, sir. Lockheed's employees are on their [346] own payroll, sir.

Q. Where is the fuel obtained for the intrastate flights?

MR. BERENS: Could you indicate which fuel you are talking about?

MR. CAMPBELL: I will strike that question, Counsel.

MR. BERENS: Yes.

MR. CAMPBELL: Q. Is any turbine fuel used on intrastate flights, if you know?

THE WITNESS: A. Generally not, Mr. Campbell, unless a Viscount were to have been substituted for a DC-6.

At the present time we are flying DC-6's into Moline, and there isn't much of a community of interest between the two cities. It is just a few flights a day.

Q. You used the term—generally, if the turbine fuel were used on intrastate flights, where would it be obtained from?

A. From this facility.



Q. From Des Plaines?

A. Yes, sir.

Q. And it would follow the same procedures [347] as the fuel used in the interstate flights?

A. Yes, sir.

. . .

[350] MR. CAMPBELL: Q. Can you explain the procedure in the aviation gasoline, the delivery or the placing of the order?

THE WITNESS: A. You mean for O'Hare Field from Indiana?

Q. Yes, sir.

A. Yes, sir.

Back in 1953 we entered into a contract with Rogers Cartage Company to act as our exclusive trucker—Rogers Cartage Company to act as our exclusive carter of bringing product into the airport serving this area.

Back in those days, of course, it was only Midway because O'Hare wasn't activated until October 1, 1955.

In the instance of Rogers, we order the fuel, as Mr. Maxfield told you, I believe, on Friday, we order the fuel by phone call to East Chicago.

Q. Is this order placed by Lockheed?

[351] A. In the instance of O'Hare, it is ordered by Lockheed. In the instance of Midway, I believe it is ordered by our agent down there, who is Butler Aviation.

Butler Aviation provide us in-to-plane fueling service at Midway, and they order our fuel as required for Midway. The fuel order was placed at the pipeline terminal of Shell at Hammond, and Rogers Cartage Company picked the fuel up for us, delivering it either to our facilities at Midway or our facilities at O'Hare Field.

Q. Do you know whether Rogers Cartage has an Illinois office?

A. Yes, sir, they do. I think they are at 103rd and

Charles or 103rd and Church. They are out in Beverly. They also have offices in Indiana.

Q. Does United Air Lines own any storage facilities at Midway Airport?

A. Yes, sir, on the airport we do.

We own two 25,000-gallon tanks for the storage of turbine fuel. We own one 25,000-gallon tank for 100-130 av-gas, and we have a 10,000-gallon tank for automotive gasoline for our ground vehicles on the airport itself.

[352] Off the airport we have de-activated storage.

Q. Does Rogers Cartage deliver the—transport the fuel in the case of Midway to the employees of United at Midway Airport?

A. To the agents of United, Butler Aviation, who accept the fuel for us at Midway.

Q. You do not transfer any fuel from O'Hare Airport to Midway?

A. No, sir.

MR. BERENS: Excuse me. Reporter, could you read that last question and answer back, please.

(The record was read.)

MR. CAMPBELL: Q. On the metering system that you have testified to at O'Hare Airport, what happens when the reading is taken and by whom it is taken?

THE WITNESS: A. Lockheed Air Terminal as the agent for the fourteen signatory airlines, according to their agreement with the fourteen signatory airlines, have the responsibility to receive all the fuel and go through the fuel accountability of it, the accountability is performed by Lockheed.

Q. Lockheed bills United separately?

[353] A. Lockheed bill all the carriers according to the services that are performed for them.

THE COURT: You mean for their services or for the gasoline?

MR. CAMPBELL: For the metering service.

THE COURT: Oh.

THE WITNESS: No. It is a part of the overall service to all fourteen carriers.

Every night at midnight on O'Hare Field the Lockheed people do what is termed a read-out, and they go around and check all of the metering facilities at all of the individual carriers and then they provide the individual airlines with the number of gallons that were drawn from the facility as it related to that carrier.

[358] MR. BERENS: Q. For the calendar year 1967, Mr. Stark, would you give us in round figures the total purchases by United from all sellers of turbine fuel for United's whole system?

THE WITNESS: A Turbine fuel only?

Q. Yes.

A. It is of the magnitude of 1,243,000,000—may I again refer to a note?

Q. Yes, you may.

A. 1967 turbine fuel, 1,243,918,497 gallons.

Q. Do you have the figure for aviation gas?

A. I do. It was 61,675,503 gallons.

Q. Now, are these quantities supplied entirely by Shell Oil?

A. Oh, no, sir. Shell supplies approximately 25 percent of the turbine fuel, and a little more than that of the aviation gasoline.

[359] We have six other principal suppliers in the United States. No single oil company is capable of producing the amount of fuel required by United.

Q. Again for the year 1967, what was the total gallonage of turbine fuel purchased by United from Shell from all of these 43 or so points?

A. About 320 million.

May I again refer—

Q. Yes.

THE COURT: Is this turbine?

MR. BERENS: Yes, your Honor.

THE WITNESS: May I use my briefcase, sir?

Thank you.

Your question was our purchases of Shell for last year?

MR. BERENS: Q. Of turbine fuel for '67 for all the points at which they deliver.

A. 321,636,417 gallons.

Q. Do you have the figure for aviation gas for that same year?

A. I do. 25,099,039.

Q. Now, I think we have already established the figure for turbine fuel for East Chicago of [360] around 205 million gallons.

Do you have the figure for East Chicago on aviation gas?

A. 10,073,081.

Q. Now, is that aviation gas just of one specification?

A. It is 100-130.

Q. On what basis was Shell selected in 1953 and has continued to be your sole supplier in the East Chicago area for both turbine fuel and aviation gas?

A. Mr. Berens, in certain years we have at certain contractual times invited proposal to bid and Shell was the low successful bidder.

In other instances in the judgment of our management we elected to negotiate a contract with them and extend, and our contracts generally speaking are of the magnitude of a minimum and a maximum of four or five years.

Q. Now, the selection of Shell Oil for the East Chicago delivery—strike that.

In selecting Shell for the 43 points including the East Chicago delivery point, did you evaluate East Chicago

alone or was that evaluation [361] based on all of the points at which they were going to deliver fuel?

A. To explain, Mr. Berens, turbine fuel— when United first purchased turbine fuel and signed a contract with Shell in the fall of 1958 for fueling our aircraft when they were delivered in 1959, we invited proposal to bid of 16 oil companies, the principal 16 oil companies of the United States.

And relating to our O'Hare requirements, there must have been seven or eight oil companies bid and Shell were competitively low at that time.

Q. Now, was that bid related only to East Chicago or were the bids involving a number of the other points at which Shell eventually delivered the fuel?

A. No, it was a bid over our entire system, 105 stations.

Q. Now, you mentioned that six or seven other oil companies bid at this time for turbine fuel involving the East Chicago area.

Could you name some of these other companies?

A. Yes, sir, I could.

There was American Oil Company. We invited Sinclair [362] to bid. I don't recall whether Sinclair bid or not, but they were invited.

Mobil Oil Company were invited to bid. Phillips Petroleum were invited to bid. There were certain oil companies whose volumes of production were such that they did not have sufficient volume to supply our requirements.

Q. Which of these oil companies having refining facilities or terminal facilities in the East Chicago-Hammond-Northern Indiana area?

A. American Oil Company have a very large refinery in Whiting, Indiana.

Sinclair Refining Company are in close proximity of Shell in East Chicago, Indiana.

Mobil Oil Company are located in East Chicago, and Phillips have facilities either in—pipeline facilities either



in Hammond or East Chicago. The two towns abut, and I am not sure which town.

MR. BERENS: Your Honor, could I have the reporter read that question back. Would you read the answer?

(The answer was read.)

Q. Are these the—

[363] A. Pardon me.

May I add there were two other companies that bid. I have been sitting here thinking of them. Humble Oil and Refining bid. They have a refinery in East Chicago, and I believe we invited Texaco to bid. However, they were, if I remember correctly—they advised they did not have sufficient volume to take care of us.

Q. Does Cities Service have a refinery in the Northern Indiana area?

A. Yes, sir.

They were invited to bid. However, I don't recall whether they submitted a bid or whether they declined.

Q. In what capacity does West Shore Pipeline Company act for United when Shell delivers the fuel to the meters of West Shore?

A. They are the transportation company.

Q. What is the basis for Shell's invoices for turbine fuel to United?

A. The receiving meters of West Shore Pipeline, temperature-compensating meters at Hammond, Indiana.

Q. Who is the shipper of fuel on West Shore?

A. United Air Lines.

[364] Q. Who pays for West Shore's transportation charges?

A. West Shore bill United once a month.

Q. And this once a month bill covers all three shipments, is that correct?

A. That is correct, sir. We apply an off-set on that amount of shortage fuel against the total bill.

Q. Mr. Stark, I show you United's Group Exhibit No.

32 for identification and ask you to describe what it is generally.

A. This No. 32 is the State of Indiana wholesale distributor's license purchased by United Air Lines for the past fifteen years and page 3 is a reproduction of our check of last July for the renewal thereof.

Q. Why do you have this Indiana license, this Indiana distributor's license, for motor fuel?

A. Because according to the laws of the State of Indiana you must have a wholesaler's license to receive large quantities of fuel.

MR. CAMPBELL: We will object to that line of questioning and the answer, your Honor, as the witness has not been qualified as an expert on the [365] Indiana laws.

THE COURT: Well, I think he is qualified to give his opinion as to that fact.

Overruled.

MR. BERENS: Q. If you know, Mr. Stark, does this license apply to your receipt of this fuel at northern Indiana at East Chicago?

THE WITNESS: A. Yes, sir.

MR. BERENS: If there is no objection, I would like to offer this Exhibit No. 32 into evidence.

THE COURT: Have you seen this exhibit?

MR. CAMPBELL: Yes. No objection.

THE COURT: It will be admitted.

(The document above-referred to, heretofore marked Plaintiff's Exhibit No. 32, for identification, was received in evidence, and is in words and figures as follows, to-wit:)

[366] MR. BERENS: Q. Who orders the turbine fuel delivered by Shell to United at Hammond?

THE WITNESS: A. The fuel ordered by United for delivery at Hammond is ordered by Lockheed Air Terminal.

Q. What is Lockheed Air Terminal Corporation?

A. Lockheed Air Terminal Corporation is a totally owned subsidiary of Lockheed Aircraft of Burbank, California.

Q. What is the business of Lockheed Air Terminal Corporation?

A. Lockheed Air Terminal Corporation was formed in 1939 for the express purpose of acting as a fueling agent for the domestic airlines of the country at various points over the country, including their own airport, Burbank.

Q. You testified, I believe, that it is a wholly-owned subsidiary of Lockheed Aircraft Corporation?

A. That's correct.

Q. If you know, does Shell Oil own Lockheed Aircraft Corporation?

A. To the best of my knowledge, they do not, sir.

Q. Does Lockheed Air Terminal Corporation act for United other than at O'Hare?

[367] A. Yes, at eleven points over our system, nine in the Continental United States, and they do our fueling at Hilo and our military fueling at Honolulu, on the military or MAC Lift.

Q. Now, you testified a moment ago that Lockheed Air Terminal arranges the orders of the fuel from Shell. Who arranges the shipments of United's fuel over West Shore Pipeline?

A. The dispatcher of West Shore Pipeline is sent a letter by Lockheed, a Lockheed employee, as an agent for United, advising the shipments for the ensuing month. The letter is sent to the dispatcher of West Shore Pipeline prior to the 10th of the preceding month.

Q. Mr. Stark, I show you United Exhibit No. 33 marked for identification and ask you to describe very generally what it constitutes.

A. This, Mr. Berens, is the agreement that I spoke of earlier, the Des Plaines storage agreement, between Lockheed Air Terminal, American Air Lines, Capital Air Lines

and United Air Lines, entered into in December of 1959 for the operation and maintenance of the Des Plaines Storage terminal.

**MR. BERENS:** Unless there is any objection, we [368] will offer this now into evidence.

**MR. CAMPBELL:** No objection.

**THE COURT:** It is admitted.

(The document above-referred to, heretofore marked as Plaintiff's Exhibit No. 33, for identification, was received in evidence, and is in words and figures as follows, to-wit:)

[369] **MR. BERENS:** Q. How often is United billed by Shell for the turbine fuel purchased in East Chicago for delivery—strike that.

How often is United billed by Shell for the turbine fuel delivered in East Chicago to the West Shore Pipeline Company?

**THE WITNESS:** A. Three times each month.

Q. Are these bills sent directly to United?

A. Yes, they are.

The billings come out of Indianapolis office of Shell and are mailed directly to us.

Q. How often does United pay these invoices?

A. Within a very few days.

These are discounted bills, and all Shell bills received from other parts of the country, together with these, are paid promptly.

Q. Where is this payment made and how is it made?

**THE COURT:** Isn't it made to the Indianapolis office?

**THE WITNESS:** A. It is made by check to the Shell office at 450 Meridian Street, Indianapolis, Indiana.

**MR. BERENS:** Q. Is Lockheed involved in any way in the payments made to either Shell or West Shore?

[370] A. No, sir, they are not.

[401] Q. If you know, Mr. Stark, does Shell Oil Company have any ownership interest in Butler Aviation?

A. To the best of my knowledge, they do not.

Q. Now, under the Butler agreement, does United as principal have the authority to direct Butler's activities under the contract?

A. Yes, we do.

They are under our direct supervision. Our station manager at Midway directs Butler in the method, form and mode of service.

Q. Referring back to the Lockheed agreement, both of the Lockheed agreements, both for Des Plaines, the break-out storage and on-the-field at O'Hare, do the principals of those agreements, in particular United, have the right under the agreements to direct the activities of Lockheed?

A. We have the right and we do direct them.

I am in telephone contact with Lockheed several times a day on matters of their agency.

[407] You testified several days ago in regard to the Indiana gross income tax, that you pay the [408] amount to Shell Oil.

When you made that statement, were you referring to the physical remitting of the funds to Shell Oil?

A. I was.

[430] You may proceed.

CHARLES WELDON SUMMERS,

was thereupon called as a witness herein, after having been first duly sworn, and was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. BERENS:

Q. Would you state your name, please?

A. Charles Weldon Summers.

Q. Your address?

A. 849 Willow Lane, Hinsdale, Illinois.

THE COURT: What lane?

THE WITNESS: Willow.

MR. BERENS: Q. For whom do you work?



**THE WITNESS:** A. Shell Oil Company.

**Q.** What is your present title?

**A.** My title is manager tax, the Chicago Tax Office.

**Q.** Would you describe in general your duties?

**A.** I am responsible for the tax administration of state and local taxes in about a nine-state area covered by the Chicago Tax Office.

This includes property, sales and use and various other state and local taxes, motor fuel.

[431] **Q.** As part of your duties, are you involved with or familiar with the Illinois Department of Revenue audits of Shell Oil under the R.O.T. and Use Tax Acts?

**A.** I am.

**Q.** For what period has Shell Oil been audited under these acts?

**A.** Our last audit ended as of December 31, 1965.

**Q.** Incident of this audit, did the auditors set up any R.O.T. liability for Shell on the basis that they had delivered any type of fuel product to customers in Illinois?

**MR. CAMPBELL:** Object to the line of questioning, your Honor.

An audit by the auditors of the Department of Revenue could relate to a number of factors. There is a number of revenue acts in the State of Illinois.

**MR. BERENS:** I said R.O.T.

**MR. CAMPBELL:** Whether there was an audit or not by the auditors of the Department of Revenue, it would have no bearing on this lawsuit.

[436] **MR. BERENS:** Would you please read the question again?

(The question was read as follows: "Incident of this audit, did the auditors set up any R.O.T. liability for Shell on the basis that they had delivered any type of fuel product to customers in Illinois?")

**THE WITNESS:** A. There was an assessment for R.O.T.

**Q.** During this audit, did the auditors set up any liability for Shell on the basis that they [437] should have collected use tax from customers because of the delivery of any type of fuel in Illinois?

**A.** There was an assessment for use tax on Shell.

**Q.** And both of these assessments—strike that.

The assessments that we are referring to of R.O.T. or use tax were based on the issue of that delivery had been in Illinois rather than in some other state as originally returned by Shell?

**MR. BROMBERG:** I object, your Honor.

**THE COURT:** That is quite a little bit leading, I will say that.

The objection is sustained.

**MR. BERENS:** All right.

**Q.** During this audit, did the auditors set up any R.O.T. or use tax liability on the basis that fuel, turbine fuel or aviation gas, purported to be delivered by Shell to United in Indiana actually was delivered in Illinois?

**THE WITNESS:** A. No, not to my knowledge, they did not.

[Caption Omitted]

### OPINION OF TRIAL COURT

This suit was commenced by United Air Lines, Inc. to enjoin the assessment and collection of Illinois Use Tax measured by the amount of fuel owned by United and loaded in Illinois into fuel tanks of its aircrafts to propel them in interstate and foreign commerce.

In arriving at a decision in this case, which as far as I have been able to determine is without precedent in this State, or for that matter in any of the other States, I have been greatly aided by the excellent memorandum of authorities submitted by the attorneys for each of the parties.

The plaintiff contends and the proof establishes that all of this fuel is purchased from Shell Oil Company in the State of Indiana, and is transferred to storage facilities at or near O'Hare and Midway Airports for temporary stor-

age and then loaded into the fuel tanks of the aircraft for use beyond the borders of the State of Illinois. With respect to the fuel designated for use in the planes operating out of O'Hare Field the fuel is transported by pipeline from either Hammond or East Chicago, Indiana, to a storage tank located in DesPlaines, Illinois, which is owned by Shell and leased jointly to United and American Airlines Company. From there it is then transferred by a series of pipelines to O'Hare Field and eventually pumped or placed in plaintiff's aircraft. With respect to Midway, the fuel is transferred by truck and placed in storage and ultimately placed in the planes.

Since the adoption of the Use Tax Act in 1955, until June, 1963, all common carriers were required to pay a tax only on that portion of the fuel actually consumed in the State of Illinois, which concept of liability under that Act has been designated in the trial of this matter as the "Burnoff theory."

On June 3, 1963, the then Director of Revenue, Theodore J. Isaacs, ruled the Department's position to be that "temporary storage ends and taxable use occurs when the fuel is taken out of storage facilities and placed in the tank of the airplane, railroad engine or truck. At this point the fuel is converted into its ultimate use, and therefore a taxable use occurs in Illinois." The announced purpose of the bulletin as stated therein was to "clarify the Department's position concerning the temporary storage provisions of the Use Tax Act and their relationship to fuel consumed by a common carrier."

It is this interpretation of the Use Tax Act which is attacked by the plaintiff.

Plaintiff contends that this interpretation is unauthorized by, and contrary to the Use Tax Act, and is violative of Article 2, Section 2; Article 4, Section 13; and Article 9, Section 1, of the Constitution of the State of Illinois; as well as Article 1, Section 8, Clause 3; Article 1, Section 10, Clause 2, of the Constitution of the United States, and the Fourteenth Amendment thereto.

As I understand the position of the plaintiff, it contends that none of the fuel placed in the tanks of its planes in Illinois is consumed in Illinois. To support this, plaintiff submits that a regulation of the Civil Aeronautic Board requires that all planes arriving at Midway or O'Hare must carry reserve fuel sufficient to carry them to other airports such as Milwaukee, Detroit, Indianapolis, St. Louis, etc. in case they are not able to land at the local airports. By virtue of flying at an altitude in excess of 30,000 feet this fuel becomes extremely cold and when refueling takes place at local airports, the fuel is much warmer and consequently when injected into the plane rises to the top of the fuel tank. This results, plaintiff contends, in the cold fuel which was in the plane on its arrival, being used first, and which fuel, in all or practically all instances, is more than sufficient to propel the planes out of Illinois.

Plaintiff's evidence that higher temperature of fuel pumped into tanks of its planes upon their arrival in Illinois causes such fuel to flow through and rise above any colder fuel in those tanks corroborates the fact that such natural phenomenon results.

This evidence, however, does not permit this Court to then conclude that therefore none of the fuel pumped in Illinois into those tanks was consumed in propelling plaintiff's planes through the State of Illinois.

Plaintiff then contends that in any event, the Use Tax Act required it to pay that tax only on the amount of fuel consumed in Illinois. The law, however, is otherwise. The Supreme Court of this State has consistently stated that the tax is imposed on the *privilege* of use, not on the *extent of the use* of the privilege. It matters not how much of the fuel is consumed in Illinois. (*Bode vs. Barrett*, 412 Ill. 204; *Turner vs. Wright*, 11 Ill. 2d. 161; *Hicklin vs. Coney*, 290 U.S. 169.)

Further it appears from the statute and the law that the definition of "use" extends beyond actual "consumption" of tangible personal property. The statute defines use as fol-

lows: "Use means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property." (Ch. 120, Par. 439.2, Ill. Rev. Stat.)

Unquestioned here is the fact that plaintiff owns the fuel that it causes to be stored in the storage tanks in Illinois, from which tanks it further causes such fuel to be withdrawn, then conveyed to the planes, and then pumped into the fuel tanks of those planes in Illinois.

Those facts clearly disclose that plaintiff does "exercise a right or power over tangible personal property (the fuel) incident to the ownership of that property" in Illinois. This is the exact statutory definition of "use." The tax is properly imposed on the privilege of exercising such dominion. (Turner vs. Wright, 11 Ill. 2d 161; Miller Brewing Co. vs. Korshak, 35 Ill. 2d 86; Philco Corporation, et al., vs. Department of Revenue, Doc. Nos. 40497, 40582, rehearing denied September 1968, not yet officially reported.)

It seems apparent that the facts in this case invoke tax consequence unless plaintiff is excluded by one of the exemptions in the Act. If plaintiff is excluded, it must be by virtue of Subparagraph (d) of Paragraph 439.33, which is as follows:

(d) the temporary storage, in this State, of property which is acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State or physically attached to or incorporated into other property that is used solely outside this State.

At first impression it appears that this provision might indeed exempt plaintiff from tax consequence on fuel which it proves is consumed solely outside the State of Illinois, even though plaintiff in Illinois exercises dominion over that fuel which constitutes the "use" under the Act invoking tax liability.

However, two reasons emerge why plaintiff is not entitled to this exemption.

First, plaintiff has not met the burden of proof the law requires. As stated previously, I cannot conclude from the



evidence that *none* of the fuel placed in the tanks of its planes in Illinois was consumed here. In addition, many of the plaintiff's flights originate in Chicago, and the conclusion must be drawn that most, if not all, of these flights take on the bulk of their fuel here.

Second, in my opinion, the exemption intended to be granted by the Legislature is not available to the plaintiff.

As I read that exemption in the context of the purpose of the Act, and the applicable law, the exemption is restricted to that class of tangible personal property which enters the State of Illinois, temporarily rests here, then leaves to be sold or resold outside the State. The property *itself* must be capable of interstate mercantile transaction after it leaves Illinois. Plaintiff's fuel does not meet this test. Plaintiff itself consumes that fuel.

It is my opinion that the interpretation placed on the Act by the then Director of Revenue is authorized by, and in accord with that Act. Both the Act and the interpretation are proper and valid, and do not violate any of the State or Federal Constitutional provisions as claimed by the plaintiff. I so hold.

• • •  
[Caption Omitted]

### FINAL DECREE

This cause having come on for trial, evidence having been adduced by the parties, briefs having been filed, and the opinion of the Court having been given,

#### IT IS ORDERED:

(a) Judgment is hereby entered in favor of the defendants, Theodore A. Jones, Director of Revenue of the Department of Revenue of the State of Illinois, and Adlai E. Stevenson, Treasurer of the State of Illinois, in accordance with the written opinion of Judge Thomas C. Donovan delivered on December 9, 1968, which opinion is hereby ordered to be filed as a part of the record in this cause and is hereby incorporated by reference into this Final Decree.

(b) If no appeal has been perfected within the time permitted by law, all orders granting temporary injunctions in this cause shall, as of that time and in that event, be vacated and dissolved, and the Treasurer of the State of Illinois is, as of that time and in that event, directed to transfer all sums now or then held in the protest fund maintained by the Treasurer for the purpose of, and pertaining to the fuel involved in, this litigation into the General Revenue Fund of the State of Illinois.

(c) If, however, an appeal is perfected within the time permitted by law (i.e., either within thirty (30) days of the date of this Final Decree or within thirty (30) days of this Court's determination of any motion made pursuant to 1967 *Ill. Rev. Stat.*, Ch. 110, § 68.3), said temporary injunctions shall remain in full force and effect, and the Treasurer of the State of Illinois shall keep the amounts heretofore and hereafter paid under protest in such protest fund pending further order of this Court.

(d) In the event an appeal is perfected as provided in paragraph (c) hereof, United Air Lines, Inc., shall continue to pay the amount of its potential use tax liability for the fuel involved in this lawsuit into such protest fund in the same manner as it has heretofore done.

Dated: December 23rd, 1968

Enter:

/s/ THOMAS C. DONOVAN

Judge Thomas C. Donovan

Judge Donovan

Dec. 23, 1968

Circuit Court

[Caption Omitted]

## **NOTICE OF APPEAL TO THE SUPREME COURT**

1. United Air Lines, Inc., plaintiff-appellant, hereby appeals to the Illinois Supreme Court from the Final Decree entered on December 23, 1968.

2. Plaintiff-appellant prays that said Final Decree be reversed and that this cause be remanded to the Circuit Court of Cook County with instructions to enter an appropriate final decree in favor of plaintiff-appellant or for further proceedings as the Illinois Supreme Court shall determine.

**UNITED AIR LINES, INC.**

By **MARK H. BERENS**  
**Mark H. Berens**

/s/ **WM. BRUCE HOFF, JR.**  
**Wm. Bruce Hoff, Jr.**

**231 South LaSalle Street**  
**Chicago, Illinois 60604**  
**STate 2-0600**

**Its Attorneys**

**Of Counsel:**

**MAYER, FRIEDLICH, SPIESS,**  
**TIERNEY, BROWN & PLATT**

[475]

[Caption Omitted]

**ORDER**

This cause coming on to be heard on the motion of United Air Lines, Inc., plaintiff, and due notice of said motion having been given,

**IT IS ORDERED:**

A. That the Report of Proceedings heretofore filed herein should be and the same is hereby certified as true and correct.

B. That the following persons should be and the same are hereby substituted as party defendants herein:

1. George E. Mahin, as Director of Revenue of the Department of Revenue of the State of Illinois;
2. William J. Scott, as Attorney General of the State of Illinois;
- [476] 3. Adlai E. Stevenson, III, as Treasurer of the State of Illinois.

C. That plaintiff is hereby authorized to file, instanter, copies of the following documents for inclusion in the full Record on Appeal:

1. Order of Temporary Injunction, entered September 19, 1963;
2. Amended Complaint in Chancery, with exhibits, filed September 25, 1963;
3. United Exhibits 1, 2 and 3, admitted into evidence at the trial herein;
4. Excerpts from United Exhibit 22 as designated in plaintiff's Praeceptum for Trial Court Record; and
5. Objection to Request for Admission, filed February 16, 1968.

Dated: April 15, 1969.

Enter:

/s/ THOMAS C. DONOVAN  
Judge

[5] [In the Supreme Court of Illinois]

Docket No. 42042—Agenda 37—May, 1970.

UNITED AIR LINES, INC., Appellant. *vs.* GEORGE E. MAHIN  
*et al.*, Appellees.

**PER CURIAM:** United Air Lines, Inc., brought this action in the circuit court of Cook County to enjoin the Department of Revenue from assessing and collecting Illinois use tax on aviation fuel loaded at Chicago airports on planes of United which are about to embark upon, or to continue upon, interstate and foreign flights. Named as defendants were appropriate State officials and United's supplier, the latter having the burden of collecting the tax. Judgment was for defendants and United has appealed, being joined by American Airlines, Braniff Airways and Northwest Airlines, to whom we have granted leave to file briefs as *amici curiae*.

The Use Tax Act, which went into effect in August, 1955, (Laws of 1955, p. 2027), imposes a tax on the privilege of using in this State tangible personal property that was purchased elsewhere, and was designed to complement the Retailers' Occupation Tax Act, (Laws of 1933, p. 924), under which a tax is imposed upon persons engaged in the business of selling tangible personal property to purchasers for use and consumption. It has been found to be constitutional (*Turner v. Wright*, 11 Ill.2d 161), and it is settled that the Use Tax Act was enacted for the valid purposes of preventing evasion of retailers' occupation tax by persons making out-of-state purchases of tangible personal property for use in Illinois, and of protecting Illinois merchants against diversion of business. At issue here, a matter of first impression, is the construction and application of that portion of section 3 of the Act which, from its inception in 1955, has provided for an exemption from the tax in these terms: "To prevent actual or likely multistate taxation, the tax herein imposed shall not apply to the use of



tangible personal property in this State under the following circumstances: \* \* \* (d) the temporary storage, in this State, of tangible personal property which is acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State \* \* \*." Ill. Rev. Stat. 1955, ch. 120, par. 439.3.

Conforming to a practice which has been essentially the same since May, 1953, United purchases and takes delivery of the aviation fuel in question from Shell Oil Company at facilities of the latter located in Hammond and East Chicago, Indiana. Thereafter, United transports it by common carrier pipeline and trucks to its underground storage facilities at O'Hare and Midway airports in Illinois. Fuel transported by pipeline is first placed in storage tanks at Des Plaines, Illinois, and from there, as needed, is piped to the underground facilities. It remains in the latter only so long as necessary for certain purification processes, and from there is pumped into the tanks of United's aircraft, almost always immediately prior to departure time. United pays the tax on fuel used in intrastate flights, training flights and the like, and the dispute here relates only to fuel loaded on planes departing on interstate or foreign flights, United having 234 such flights each day. All of the aircraft involved must fly over specific routes prescribed by Federal aviation authorities, and thus the amounts of fuel consumed from the time the engines of the planes are started at the Illinois airports until they pass over Illinois borders can be determined with great accuracy.

From the record it appears that there were, and are, numerous common carriers, such as railroads, airlines and trucklines, which, like United, engaged in the practice of purchasing their fuel outside Illinois and storing it here prior to their use of it to propel equipment setting forth on interstate journeys. Immediately after the enactment of the

Use Tax Act in 1955, the Department of Revenue uniformly and consistently interpreted and applied the Act to these carriers in such a manner that the incidence and measure of the tax was taken to be only that portion of the fuel consumed in or over Illinois. This construction has been commonly referred to as the "burn off" rule and, during the period of its application, provoked no amendatory legislation. Eight years later, on June 3, 1963, the Department abruptly changed its interpretation and issued a bulletin which announced:

"The Department's position is that temporary storage ends and a taxable use occurs when the fuel is taken out of storage and placed into the tanks of the airplane, railroad engine or truck. At this point the fuel is converted into its ultimate use, and, therefore, a taxable use occurs in Illinois.

"If a common carrier does not have separate facilities for transferring the fuel out of the State of Illinois but always puts it into the tank of the airplane, railroad engine or truck for final consumption, then they no longer will be able to give a certificate to the vendor stating that the fuel is purchased within the temporary storage provisions of the Use Tax Act, but must pay the Use Tax to their supplier." In short, under this construction all fuel loaded on United's planes at the two airports was deemed to measure the tax, and the exemption in question was construed as having application only if the temporarily stored fuel is transported out of the state for use elsewhere by some means other than placing it in equipment which would consume it.

The present action, which for reasons not apparent in the record has been slow to progress, was soon initiated by United to enjoin the collection of the tax. In substance, it was the position of United that the new construction was erroneous and unreasonable, that the application of the Act as proposed contravenes the Illinois and Federal constitutions, and that it has no use tax liability incident to the fuel

in controversy, or, alternatively, that it is liable only for tax measured by the amount of fuel burned in and over Illinois. The trial court rejected these contentions and United has renewed them here.

To support its contention that the "burn off" construction indulged in by the Department for 8 years should continue to prevail, United relies principally upon the rule of statutory construction that courts, in determining the proper construction of an ambiguous statute, will consider and give weight to the contemporaneous construction placed upon a statute by the governmental officers or departments charged with the duty of administering it, and will usually adopt such contemporaneous construction where it is a reasonably permissible construction, has the implied assent of the legislature, and has been consistent, uniform and long continued. (See: *People ex rel. Spiegel v. Lyons*, 1 Ill.2d 409; *Illinois Bell Telephone Co. v. Illinois Commerce Com.*, 414 Ill. 275; *United States v. Leslie Salt Co.*, 350 U.S. 383, 100 L. Ed. 441, 76 S. Ct. 416; *Cory Corp. v. Sauber*, 363 U.S. 709, 4 L. Ed. 2d 1508, 80 S. Ct. 1331.) For reasons later to appear, we do not believe the statute is ambiguous; but even if ambiguity be assumed, the rule of construction relied upon cannot be employed in this case. As the rule itself recognizes, executive or administrative construction is not binding on the courts if it is erroneous (*P. H. Mallen Co. v. Department of Finance*, 372 Ill. 598; *Superior Coal Co. v. Department of Revenue*, 4 Ill. 2d 459), and in our opinion the "burn off" construction is constitutionally impermissible.

That construction of the statute, to repeat, measured the tax by the amounts of fuel consumed by United's planes in and over Illinois as they proceeded on their interstate journeys. And while it is difficult to see how such a construction could be derived from statutory language which grants exemption to temporarily stored property that is used "solely outside of this State," it is sufficient to say that the con-

struction runs afoul of the commerce clause of the United States constitution. Decisive and binding authority for this conclusion is found in *Helson v. Kentucky* (1929), 279 U.S. 245, 73 L. Ed. 683, 49 S. Ct. 279, determined under facts which, in effect at least, cannot be distinguished from those of the present case. Involved there was an Ohio river ferry operated exclusively in interstate commerce between Kentucky and Illinois. Gasoline used to power the ferry was purchased and delivered in Illinois, situs of the residence and business of the operator, and it was stipulated that "75 per cent of this gasoline was actually consumed within the limits of Kentucky, but all of it in the making of interstate journeys." (279 U.S. at 248; emphasis added.) Issue arose when Kentucky sought to impose a tax on the gasoline consumed within its limits under a statute which, *inter alia*, authorized a tax on gasoline purchased "without the state" but used "within the state." Overruling Kentucky courts, the Supreme Court found under the circumstances that the gasoline was an instrumentality of interstate commerce, thus causing the tax to be "exactd as the price of the privilege of using an instrumentality of interstate commerce," (279 U.S. at 252,) and struck it down as being an invasion of the exclusive power of Congress to regulate such commerce.

Our own statute must be held subject to the same infirmity when the amount of fuel consumed, or "burned off," within the limits of Illinois is made the incidence and measure of the use tax. All of the fuel over which controversy has arisen is consumed in the making of interstate journeys, and once the engines of a plane are started in Illinois, it can be said unequivocally that the fuel becomes an instrumentality of interstate commerce. Under the conclusion of *Helson*, to impose a tax based upon consumption within Illinois is to exact a tax on the privilege of using the fuel in interstate commerce. (*Cf. Shell Oil Co. v. State*

*Board of Equalization*, 64 Cal.2d 713, 414 P.2d 820, 827; *Texas Gas Transmission Corp. v. Benson*, 444 S.W.2d 137; *W. R. Grace & Co. v. Comptroller of the Treasury*, 255 Md. 550, 258 A. 2d 740.) And there is more here than was involved in *Helson*. United's planes pass over many States. They do not refuel in each State, but fuel loaded here is necessarily used or consumed over and within each State. Should every State wherein fuel is consumed seek to impose a use tax measured by the amounts of fuel consumed within its borders, an intolerable burden on interstate commerce would result. Cf. *United Air Lines, Inc. v. Illinois Commerce Co.*, 32 Ill.2d 516.

Seeking to avoid the impact of *Helson*, United argues that the placing and presence of the fuel in departing planes is but a continuation of temporary storage; that the burning of fuel in and over Illinois is simultaneously consumption and the termination of temporary storage, and that the release from storage as the plane is operated in Illinois is a local event, or use, properly taxable by Illinois. Or, to put it another way, United asserts that all fuel placed in the tanks of its planes continues to be exempt under the temporary storage provision of our Act, and that the exemption is lost, and the fuel subject to the tax, only to the extent of the fuel released from the tanks for consumption in and over Illinois.

While we entertain grave doubts that *Helson* could be evaded by the fine distinction between "consumption" and "simultaneous consumption and termination from storage," and believe it probable that the fuel becomes an instrumentality of interstate commerce when it is loaded on a plane, the basic premise of the construction advanced is a faulty one. The placing and presence of the fuel in the tanks of aircraft may be "storage" in a special or technical sense, but we think it clear that the legislature did not intend for the temporary storage exemption to extend to "storage"



of such nature. It is axiomatic that the words used in a statute should generally be given their plain and ordinary, or commonly accepted meaning, unless to do so would defeat the manifest intent of the legislature. (See: 34 I.L.P., Statutes, § 117.) Here the statutory references are to "the temporary storage, in this State," of tangible personal property, and to such property "stored here temporarily." The noun "storage" is specifically defined as meaning "the act of depositing in a store or warehouse for safekeeping" and, consistent therewith, the verb "store" is defined as meaning "to deposit in a store or warehouse for safekeeping." (See: Webster's New Twentieth Century Dictionary, 2d ed., pp. 1795 and 1796; *Bandosz v. A. Daigger and Co.*, 255 Ill. App. 494, 499.) It may be observed, too, that such meanings are consistent with the legislative purpose of exempting only temporarily stored property used solely outside Illinois. Fuel is not placed or present in the tanks of an airplane for the purpose of safekeeping, and there is no rule of construction which permits a court to say that the legislature did not mean what the plain language of a statute imports. (*Western National Bank of Cicero v. Village of Kildeer*, 19 Ill.2d 342.) Appropriate here in light of United's effort to attribute a special or technical meaning to the language of the Act, is the observation in *People v. Day*, 321 Ill. 552, 555, which states: "What the framers of a statute would have done had it been in their minds that a case like the one here under consideration would arise is not the point to be considered. The inquiry is what, in fact, they did enact, probably without anticipating the existence of such facts." We conclude that the "burn off" construction was improper and that it cannot prevail as United insists.

Next to be determined is the proper construction of the temporary storage provision of the Act and, in relation thereto, the positions and arguments of the parties focus

upon *Edelman v. Boeing Air Transport, Inc.* (1933), 289 U.S. 249, 77 L. Ed. 1155, 53 S. Ct. 591. In that case the State of Wyoming imposed a tax on all gasoline used or sold in the State. Boeing, which operated out of two airports within the State, maintained an air service for transporting passengers, mail and express in interstate commerce. It purchased gasoline both within and without the State which was intermingled and stored in tanks at the airports from whence it was either sold or put into Boeing's own planes. Tax liability was admitted for the portions of the gasoline sold or used in intrastate flights, but, in apparent reliance on *Helson*, it was contended that the tax could not be validly applied to so much of the gasoline imported from outside the State as was loaded from the storage tanks into planes that consumed it in interstate flights. Rejecting this contention, the court said: "As the statute has been administratively construed and applied, the tax is not levied upon the consumption of gasoline in furnishing motive power for respondent's interstate planes. The tax is applied to the stored gasoline as it is withdrawn from the storage tanks at the airport and placed in the planes. No tax is collected for gasoline consumed in respondent's planes either on coming into the State or on going out. It is at the time of withdrawal alone that 'use' is measured for the purposes of the tax. The stored gasoline is deemed to be 'used' within the State and therefore subject to the tax, when it is withdrawn from the tanks. . . . A State may validly tax the 'use' to which gasoline is put in withdrawing it from storage within the State, and placing it in the tanks of the planes, notwithstanding that its ultimate function is to generate motive power for carrying on interstate commerce. Such a tax cannot be distinguished from that considered and upheld in *Nashville, Chattanooga & St. Louis Ry. v. Wallace*, *supra*. [288 U.S. 249.] There it was pointed out that 'there can be no valid

objection to the taxation of the exercise of any right or power incident to \* \* \* ownership of the gasoline which falls short of a tax directly imposed on its use in interstate commerce, deemed forbidden in *Helson v. Kentucky*, 279 U.S. 245. As the exercise of the powers taxed, the storage and withdrawal from storage of the gasoline, was complete before interstate commerce began, it was held that the burden of the tax was too indirect and remote from the function of interstate commerce, to transgress constitutional limitations." 289 U.S. at 251, 252.

Our own statute defines a taxable "use" as being "the exercise by any person of any right or power over tangible personal property incident to the ownership of such property" (Ill. Rev. Stats. 1961 and 1969, ch. 120, par. 439.2), and it is the contention of defendants that a taxable use occurs when United withdraws its fuel from storage and places it in its planes. United agrees that either storage (*Wallace*, 288 U.S. 249), or withdrawal from storage (*Edelman*), are the exercise of rights which might have been constitutionally taxed under our Act. It insists, however, that our legislature waived the right to tax either event when it enacted the temporary storage provision, and from this position argues that if the loading on the aircraft is intended as the taxable event, then the tax is constitutionally improper as being imposed upon an integral activity of interstate commerce. (Cf. *Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U.S. 157, 98 L. Ed. 583, 74 S. Ct. 396; *Puget Sound Stevedoring Co. v. Tax Com.*, 302 U.S. 90, 82 L. Ed. 68; *Joseph v. Carter & Weekes Stevedoring Co.*, 330 U.S. 422, 91 L. Ed. 993; *Richfield Oil Corp. v. State Board of Equalization*, 329 U.S. 69, 91 L. Ed. 80.) But both parties, in our view, oversimplify the problem by failing to consider the specific language of the Act, which we are bound to construe so that all of its provisions are given effective meaning. *People ex rel. Barrett v. Barrett*, 31 Ill.2d 360; *Pliakos v. Liquor Control Com.*, 11 Ill.2d 456.

In language which we find to be plain, simple and unambiguous, the Act has granted exemption to "the temporary storage, in this State, of tangible personal property which is acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, *is used solely outside this State.*" (Emphasis added.) Exemption is thus granted only as to tangible personal property which is stored here temporarily and which, upon withdrawal from storage, is to be used solely outside Illinois. To put it another way, the legislature has stated that the temporary storage and the withdrawal therefrom are not taxable uses, if the property in question is to be used solely outside the State. It is clear that if United was to withdraw its fuel from storage at Des Plaines and the airports and transport it outside the State for use elsewhere, as for example at an airport in nearby Wisconsin, the exemption would apply and neither the storage, nor the withdrawal, nor the transportation of the fuel outside the State would be uses subject to the tax. But United does not store in Illinois with any intention that the fuel will be used solely outside this State. Rather, the fuel is stored here only to facilitate United's operations from the O'Hare and Midway airports within the State. Under the circumstances, the "storage" becomes something more than a "temporary storage" for safekeeping subsequent to its use solely outside of Illinois. Such storage, under the plain words of the statute, does not qualify under the temporary storage exemption and, as the authorities already discussed reveal, either the storage itself or the withdrawal therefrom are uses which may be taxed without offending the commerce clause of the Federal constitution.

Contention is next made that the Department, in applying the tax, has done so in such a manner as to violate the provision of section 1 of article IX of the Illinois constitution which requires taxation to be "uniform as to the class

upon which it operates." However, there is no proof in this record that there has been a lack of uniformity or discrimination within the class of taxpayers affected, and as a consequence there is nothing which permits us to determine the issue sought to be raised. It may be added, too, that this contention is erroneously premised on a theory that the fuel stored by United is eligible for the protection of the temporary storage exemption, and that the tax has been laid on either the withdrawal of the fuel from storage or its transportation outside the State. In either event, the constitutional claim made must be found to be without merit.

For the reasons stated, the judgment of the circuit court of Cook County is affirmed.

*Judgment affirmed.*

MR. CHIEF JUSTICE UNDERWOOD specially concurring:

I agree that Illinois may constitutionally collect the tax imposed in this case on all of the fuel loaded on United's planes at the airports. I am, however, not at all certain that application of the "burn off" rule would, as the opinion indicates, be constitutionally impermissible if the statute so provides. In my opinion the statute does not so provide, but rather clearly exempts the fuel in question here only when "used solely outside this State". I do not consider discussion of the "burn off" rule necessary to the decision, and would affirm on what I consider to be the plain meaning of the statutory language.

MR. JUSTICE GOLDENHERSH joins in this concurrence.

MR. JUSTICE KLUCZYNSKI, dissenting:

I disagree with the majority's conclusion that the interpretation of section 3 of the Use Tax Act (Ill. Rev. Stat. 1955, ch. 120 par. 439.3) as originally given by the Department of Revenue was erroneous and that such an interpretation would be violative of the commerce clause.

The events of storing fuel in Illinois or the taking of



fuel from storage in Illinois are constitutionally taxable under our Act because the events are complete before interstate commerce begins. (*Nashville, Chattanooga & St. Louis Railway v. Wallace*, 288 U.S. 249, 77 L. Ed. 730, 53 S. Ct. 345; *Edelman v. Boeing Air Transport, Inc.*, 289 U.S. 249, 77 L. Ed. 1155, 53 S. Ct. 591.) Thus a tax measured by the value of the entire tank of fuel is constitutionally permissible and it follows that a tax measured by something less would also be permissible.

Section 3 of the Act in part provides: "To prevent actual or likely multistate taxation, the tax herein imposed shall not apply to the use of tangible personal property in this State under the following circumstances: \* \* \* (d) the temporary storage, in this State, of tangible personal property which is acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State \* \* \* ." (Ill. Rev. Stat. 1955, ch. 120, par. 439.3.) I believe that this section exempts that portion of the fuel which "stored here temporarily, is used solely outside this State." The intent of the owner when the fuel is placed in the tanks of the airplane is that a certain portion will be consumed in the State of Illinois. This portion is no longer exempt under section 3 and therefore taxable. The remainder of the fuel is stored in the tanks for use solely outside the State of Illinois and keeps its exempt status while in the tanks.

Such an interpretation was given to the exemption from its enactment in 1955 until June 3, 1963, when the Department of Revenue changed its position so that a tax, measured by the value of the entire tank of fuel, is imposed when fuel is taken out of a storage tank and placed into tanks of the airplane. I believe, however, that the original construction given to the statute is correct for the following reasons: First, it is a reasonable construction of the wording of the

exemption which admittedly is capable of other reasonable interpretations when applied to the facts of this case.

Secondly, the construction given to the statute at the time of enactment by the agency administering the statute is entitled to substantial weight. Before the Governor signed the Use Tax Act in July, 1955, the Department of Revenue, in response to an inquiry by the Honorable Paul Randolph (member of Illinois House of Representatives, Chairman of the Revenue Committee of the House and member of the joint House-Senate Conference Committee which recommended the Use Tax Bill for passage) stated in a letter to him its intent as to how it would administer the Act. The letter was written on July 12, 1955, by Willard Ice, then Supervisor, Rules and Regulations Division of the Department of Revenue, and stated that if a carrier purchased fuel outside of the State "and some of the items or units thereof (such as so many gallons of gasoline) are used in Illinois and some of the items or units thereof (such as so many gallons of gasoline) are used outside of Illinois, the carrier would be liable for the use tax on the items used in Illinois, but not on the items used outside of Illinois assuming that the carrier keeps adequate records to segregate the non-taxable from the taxable items."

Thirdly, the exemption as originally construed, had been applied continuously and uniformly for an extended period of time. And finally, during the eight years when the Department's original construction was in effect, the Illinois legislature amended section 3 of the Use Tax Act, at least once each session without repudiating the Department's construction. Thus, the legislature gave implied consent to the construction by nonaction on its part. See: *Canada Packers, Ltd. v. Atchison, Topeka & Santa Fe Railway Co.*, 385 U.S. 182, 17 L. Ed. 2d 281, 87 S. Ct. 359; *Cory Corp. v. Sauber*, 363 U.S. 709, 4 L. Ed. 1508, 8 S. Ct. 1331; *United States v. Leslie Salt Co.*, 350 U.S. 383, 100 L. Ed. 441, 76 S. Ct. 416;

*People ex rel. Spiegel v. Lyons*, 1 Ill. 2d 409; *Illinois Bell Telephone Co. v. Commerce Com.*, 414 Ill. 275.

For these reasons I would reverse the judgment of the circuit court of Cook County.

SCHAEFER and DAVIS, JJ., join in this dissent.

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[Caption Omitted]

**PETITION FOR REHEARING BY  
UNITED AIR LINES, INC.  
STATEMENT OF GROUNDS URGED**

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United Air Lines, Inc. ("United") respectfully requests this Court to grant it rehearing in this case for the reasons stated herein.

1. The Court's interpretation of the temporary storage provision, which in effect makes fuel stored in Illinois by a common carrier taxable because it is stored for consumption in the carrier's interstate operations from Illinois, both imposes an unconstitutional burden on interstate commerce and contravenes the purpose and language of the statute.

2. The *per curiam* opinion\* incorrectly concludes that *Helson & Randolph v. Kentucky*, 279 U.S. 245 (1929), prohibits the use of the "burn-off rule" to tax only that portion of Illinois-laden fuel actually burned in Illinois. This interpretation leads to the anomalous conclusion that taxing only that part of Illinois-loaded fuel *actually burned* in Illinois is a greater burden on interstate commerce than taxing *all* of the fuel *loaded* in Illinois.

3. As applied to fuel used by interstate carriers, the temporary storage provision is not "plain, simple and unambiguous," nor does the burn-off rule violate the Commerce Clause. Accordingly, the burn-off rule, which is a

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\* Hereinafter sometimes referred to as the Court's opinion.

reasonably permissible construction of the statute, should be followed under the doctrine of contemporaneous administrative construction. In fact, the legislative history of the temporary storage provision so clearly shows the legislative intent that an invalidation of that rule would frustrate such intent.

• • •

In addition to these substantive grounds, United submits that other important considerations arising from the unusual history and present posture of the case make rehearing—and reargument—appropriate and advisable.

Three of the Justices who participated in the decision were not members of the Court at the time the case was argued orally. United realizes that this is also true of other cases on the Court's docket, and appreciates that, for administrative and other substantial reasons, the Court cannot order reargument of all such cases. In this case, however, the Court is widely split among three viewpoints, the basic issue is one of first impression, major amounts of tax are involved, and the Court's opinion has viewed as decisive aspects of the case that were not comprehensively briefed or argued by the parties more than eleven months ago.

For these reasons, United believes that reargument of the case would be beneficial to the entire Court, and in particular for those Justices who were not sitting at the time of the original argument.

### FACTUAL RESUME

It may be helpful to restate certain salient and *uncontroverted facts* in the record regarding the aviation fuel which the Court's decision would subject to Illinois use tax (see generally United's main Brief,\* pp. 15-23, 42-45):

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\* Hereinafter referred to as United's Brief or "U.Br."

1. All the fuel is purchased in Indiana by United, subject to the Indiana gross income tax, currently at a rate of  $\frac{3}{4}\%$  of the purchase price.

2. All the fuel is temporarily stored in ground storage tanks from which it is pumped into the aircraft fuel tanks, almost always immediately prior to flight departure. All the fuel is burned by flights in interstate or foreign commerce.\*\*

3. The actual amounts of fuel burned over Illinois by United's flights can be determined with great accuracy. Of the fuel temporarily stored by United at the Chicago airports and loaded aboard its departing planes only a relatively small percentage is actually burned in Illinois, and this only by a limited number of those departing flights.

The record shows that every single flight lands in Illinois with enough fuel to take it from this State on the Federal Aviation Administration assigned route it actually used in departing from this State. The fuel on United's arriving flights is extremely chilled because of low temperatures encountered in high altitude flight. The much warmer fuel loaded at Chicago stratifies in the aircraft tanks above the cold, landed layer of fuel, which is drawn off from the bottom of these tanks to propel the aircraft on its outgoing interstate flight. This cold fuel represents from 1.7 to 7.0 times the fuel actually needed for the aircraft to depart from Illinois on FAA assigned routes.

This ratio of cold landed fuel to warm loaded fuel is particularly high on east, north and northwest departure routes which comprise 64.30% of United's flights from Chicago, so that no (or *de minimis* amounts of) Illinois-laden fuel is actually consumed by these flights in Illinois. A significant percentage of the remaining departures to the west also

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\*\* No intrastate flights are involved in this litigation.



consume in Illinois no more than *de minimis* amounts of Illinois-laden fuel. (See U.Br. pp. 18-20, 43-44, especially the table on p. 20.)

Of course, the fuel not burned in Illinois by United's departing flights is transported from Illinois in the tanks of the aircraft and is burned in other States.

A substantial portion of the fuel loaded in Illinois must, according to FAA safety Regulations, be on board when the flight lands at its destination in another State. Such fuel cannot and will not be burned in Illinois or even outside Illinois by the departing flight. It actually is used by United on other flights that occur after the plane has landed in another State and has commenced another interstate flight, say from Milwaukee to Los Angeles. (U.Br., pp. 18-19.) Such fuel is for use in another State in the same way as would fuel hauled by land from O'Hare to a Wisconsin airport as mentioned in the illustration (quoted at p. 5, *infra*) in this Court's opinion.

4. From August 1955, when the use tax was enacted, to June 3, 1963, the Department of Revenue uniformly and consistently applied a "burn-off" formula to tax only that portion of the fuel actually consumed in or over Illinois. (U.Br., pp. 23-24, 51-53.) Its abrupt change to its present position was not based on any change of the statute or on any judicial decision.

## ARGUMENT

## I.

THE COURT'S DECISION WOULD DEPRIVE ALL COMMON CARRIERS OF THE BENEFITS OF THE TEMPORARY STORAGE PROVISION FOR ALL FUEL LOADED BY THEM IN ILLINOIS FOR USE IN THEIR INTESTATE OPERATIONS EVEN THOUGH THE FUEL IS USED OUTSIDE ILLINOIS. THIS VIOLATES THE COMMERCE CLAUSE AND CONFLICTS WITH THE MANIFEST INTENTION OF THE LEGISLATURE.

The Court's opinion principally holds that United is not entitled to the benefits of the temporary storage provision of the Use Tax Act (Ill. Rev. Stat. 1961/69, ch. 120, § 439.3) because United:

"... does not store in Illinois *with any intention* that the fuel will be used solely outside this State. Rather, the fuel is stored here only to facilitate United's *operations from* the O'Hare and Midway airports within the State. Under the circumstances, the 'storage' becomes something more than a 'temporary storage' for safe-keeping subsequent [prior!] to its use *solely* outside of Illinois." (Emphasis added.)

This immediately follows the statement that:

"It is clear that if United was to withdraw its fuel from storage at Des Plaines and the airports and transport it outside the State *for use elsewhere*, as for example *at* an airport in nearby Wisconsin, the exemption would apply and neither the storage, nor the withdrawal, nor the transportation of the fuel outside the State would be uses subject to the tax." (Emphasis added.)

Several basic conclusions flow from these two propositions.

First, temporary storage of fuel in the ground tanks at the Chicago airports is the type of storage included within the scope of the temporary storage provision. The Court's example of shipping fuel to Wisconsin from such storage confirms this.

Second, that same example recognizes that the acts of withdrawal from storage and transportation from the State do not remove stored goods from the protection of the temporary storage provision. As the Court correctly saw, to have held otherwise would have nullified that provision entirely.

Third, if, as the Court has concluded, the temporary storage provision normally extends to withdrawal from storage and transportation from the State, it follows inexorably that the word "used" in the phrase "used solely" must mean something different from the broad statutory definition (*id.*, § 439.2) of "exercise of dominion" over the property.

What act then is it that removes the protection of the temporary storage provision? Or in terms of the statute, what is meant by "used" in the phrase "used solely" as applied to a consumable good such as fuel? In the context of the issues of this case, the "use" required must be consumption of the fuel by burning.\*

Fourth, the Court's illustration also indicates that a withdrawal and shipment of a portion of the fuel from the storage tanks at the Chicago airports to Wisconsin would be free of tax even though the balance of the fuel

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\* United submits that if words of the statute are to be given their plain and ordinary meaning, as the opinion states they should, fuel is "used" when it is burned. This Court has so indicated, without exception, in other cases under the ROT and Use Tax Acts, as reviewed in United's Brief, pp. 31-35, and in the *Amicus Curiae* main Brief, pp. 11-12.

remaining in storage at the Chicago airports were used in Illinois. This must mean that the "used solely" test is to be applied on individual withdrawals from storage, in contrast to taxing all fuel in ground storage because some is used in Illinois. Thus, the concept of fungibility is recognized at least to this extent.

Fifth, the Wisconsin example also discloses that the *method* by which fuel is transported from the State is decisive in the Court's application of the temporary storage provision. If fuel is loaded in Illinois in the tanks of an aircraft (or locomotive or other vehicle), it is outside the protection of the temporary storage provision, regardless of the fact that none so loaded in the tanks of that particular aircraft is actually burned within Illinois. No statutory basis for this distinction is cited.

**A. The Court's Opinion Incorrectly Applies the Temporary Storage Provision to Fuel Stored and Loaded in Illinois by Interstate Carriers.**

If the storage of fuel at the Chicago airports, and the ancillary withdrawal from storage and transportation from the State, normally would be protected by the temporary storage provision, what removes the fuel loaded aboard United's aircraft at Chicago airports from this protection? The Court's opinion answers this by stating that the *ground storage* itself at the Chicago airports is not within the temporary storage provision because United:

"... does not store in Illinois *with any intention* that the fuel will be used solely outside this State. Rather, the fuel is stored only to facilitate United's *operations from* the O'Hare and Midway airports within the State." (Emphasis supplied.)

The rationale of this passage is unclear. The most literal interpretation is that the Court characterized the mere

storage of fuel by United to facilitate its operations from the Chicago airports as a type of storage which is not protected by the temporary storage provision. Expressed in another way, this would mean that the stored fuel is subject to tax because—and only because—it is being held for interstate flights departing from Illinois. If this is the interpretation intended, it constitutes a direct burden on interstate commerce, as is explained more fully in Part B (at pp. 9-11, *infra*).

If the passage is intended to mean that all fuel stored at the Chicago airports is taxable because some of it is burned within Illinois by some departing flights, the opinion applies the word "solely" to fungible goods in a way that is unlikely to have been the Legislature's intention. Moreover, such an approach departs from a considerable body of authority to the effect that the fungibility of goods is recognized in the application of the ROT and use tax, as is more fully developed in Part C (at pp. 11-13, *infra*).\*

As a preliminary matter, United submits that the Court has interpolated a new standard into the temporary storage provision contrary to the express language of the statute. The temporary storage provision applies when the property stored here in fact is used solely outside this State, and not upon whether it is *intended to be* used solely outside Illinois.

But even if the taxpayer's intention is engrafted onto the statute, there is nothing in the record that discloses United's intention as to where the fuel is to be burned.\*\*

\* If, although unlikely from the language used, the Court meant that the temporary storage provision was not applicable because every departing flight burns some Illinois-laden fuel, this would be subject to the foregoing objection, and in addition would be contrary to the record as outlined above (pp. 3-4, *supra*) and shown in United's Brief (pp. 18-20, 42-48).

\*\* As has been already established at p. 6, *supra*, in the context of this case "use" must mean burning of the fuel.



apart from the reasonable inference that United intends the fuel to be burned where it knows it will be burned. Since United does know, it does not matter whether intent to use or actual use is the relevant standard.

**B. The Court's Interpretation Violates the Commerce Clause Because in Effect It Imposes Use Tax on Fuel Stored in Illinois by Common Carriers Only Because It Is Stored for Use in Their Interstate Operations from Illinois.**

The Court misapplies *Edelman v. Boeing Air Transport, Inc.*, 289 U.S. 249 (1933), to justify the imposition of the use tax under the facts of this case. That case and other authority cited in United's Brief (p. 62) establish that a State may impose a non-discriminatory tax on the storage of fuel, or its withdrawal from storage, which will not be prohibited merely because the tax is imposed on fuel immediately prior to its use to propel an instrumentality of interstate commerce. Contrary to the situation in the instant case, none of those cases involved a tax on storage or withdrawal that was imposed *only* because the fuel was stored by a common carrier to use in its interstate operations from the State.

Thus, as the temporary storage provision is construed in this Court's opinion, the incidence of the tax really is on the commitment of (or the intent to commit) the fuel to interstate operations. This is squarely prohibited by *Helson & Randolph v. Kentucky*, 279 U.S. 245, 249-252 (1929); *Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U.S. 157 (1954); *Puget Sound Stevedoring Co. v. Tax Commission*, 302 U.S. 90, 92-94 (1937); *Joseph v. Carter & Weekes Stevedoring Co.*, 330 U.S. 422, 427, 433-34 (1947); *Richfield Oil Corp. v. State Board of Equalization*, 329

U.S. 69, 84 (1946); *Texas Gas Transmission Corp. v. Benson*, 444 S.W.2d 137, 139 (Tenn. 1969).\*

The effect of the instant decision of the Court is to condition the availability of the temporary storage provision to common carriers on the fuel *not* being used by them to facilitate the operation of interstate flights departing from this State. Ever since *Western Union Telegraph Co. v. Kansas*, 216 U.S. 1, 30-37 (1910), holding that Kansas could not impose a capital stock fee computed on the *total* authorized capital of Western Union as a condition to conducting local business in Kansas, such a condition has been clearly unconstitutional. See *e.g.*, *Quaker City Cab Co. v. Pennsylvania*, 277 U.S. 389 (1928) (State cannot impose upon a foreign taxicab company, as a condition of doing business locally, a tax invalid under the Equal Protection Clause); *Frost & Frost Trucking Co. v. Railroad Commission*, 271 U.S. 583 (1926) (State cannot constitutionally affix to privilege of using highways the condition that a carrier assume all the burdens and duties of a common carrier); *Terral v. Burke Const. Co.*, 257 U.S. 529 (1922) (State law invalid which requires foreign corporation, as a condition of continuing to do business, to refrain from resorting to Federal courts).\*\*

\* See also *Bingaman v. Golden Eagle Western Lines, Inc.*, 297 U.S. 626, 629 (1936); *McCarroll v. Dixie Greyhound Lines, Inc.*, 309 U.S. 176, 180 (1940), *rehearing denied*, 309 U.S. 696; *Mid-Continent Air Express Corp. v. Lujan*, 47 F.2d 266, 267-68 (D. N.M. 1931).

\*\* The impermissibility of a State's imposing unconstitutional conditions upon the exercise of a legally protected activity continues to be reiterated by the courts. See, *e.g.*, *Garrity v. New Jersey*, 385 U.S. 493, 500 (1967); cf. *Watson v. Employers Liability Corp.*, 348 U.S. 66, 73 (1954); *id.* at 78-81 (Frankfurter, J., concurring and reviewing authorities); *Patton v. North Carolina*, 381 F.2d 636, 640 fn. 10 (4th Cir., 1967), *cert. denied*, 390 U.S. 905 (1968). See generally Note, *Unconstitutional Conditions*, 73 Harv. L. Rev. 1595 (1960).

The unconstitutional condition doctrine of the *Western Union* case and its progeny has been adopted and applied by this Court. *Missouri Pacific R.R. Co. v. Public Utilities Commission*, 292 Ill. 427, 429-433 (1920); *U.S. Borax Corp. v. Carpentier*, 14 Ill.2d 111, 117-118 (1958).

**C. The Failure to Recognize the Fungibility of the Fuel in Applying the "Used Solely" Requirement is Unreasonable in Light of the Facts and Departs from Precedents of this Court.**

United previously posited (p. 8, *supra*) that the Court may have reached its result on the theory that the requirement of sole use outside Illinois was not fulfilled, because, of all the fuel temporarily stored by United at the Chicago airports, some may be burned in Illinois by some of its departing flights—or alternatively, that the Court concluded that *all* departing flights burn at least some small amount of Illinois-laden fuel.

Both alternatives proceed from the unstated premise that the Legislature must have intended the word "solely" to be narrowly construed without regard to the special nature of fungible goods, despite the fact that the Legislature has recognized their special nature by general legislation since it adopted the Uniform Sales Act in 1915. (See *Amicus Curiae* Reply Brief, p. 6.)

The Court's conclusion constitutes a departure from its consistent recognition of the concept of fungibility in other cases interpreting the ROT and Use Tax Acts. See *Granite City Steel Co. v. Department of Revenue*, 30 Ill.2d 552, 559-60 (1964); *Columbia Quarry Co. v. Department of Revenue*, 40 Ill.2d 47, 50-51 (1968), and the discussion in United's Brief (pp. 36-42). Without exception, these cases establish the proposition that fungible goods such as fuel are not to be treated as if they were a unitary article such as a

car or a hammer. Any use of a unitary item constitutes the use of the whole. In contrast, use of 10 "units" of fungible goods is use of those 10 units, but not use of 90 other units that may have been stored with the 10 at some time or other. Fuel is not burned in the huge ground storage tanks at O'Hare. It is not burned by the plane. It is burned in the engines by individual drops or, more precisely, molecules. The fuel which is not burned while the plane is over Illinois is being *transported* from the State after temporary ground storage, and therefore remains within the scope of the temporary storage provision, whether or not it is deemed to be in "storage" in the plane's storage tanks.

Perhaps this point can be illustrated by the example of an electric utility which temporarily stores several hundred miles of copper cable (that it purchased outside Illinois) in a Chicago warehouse. If it strings this cable from a power plant near Chicago to Milwaukee, only that portion of the cable actually strung in Illinois would be deemed used in Illinois so as to remove it from the temporary storage provision. The portion used in Wisconsin would not be subjected to use tax merely because some of the cable originally stored with it had been used in Illinois—or, expressed in terms of the statute, because all of the stored cable had not been "*used solely*" outside Illinois. The fact that cable used both within and without Illinois had been temporarily stored in the same warehouse would not lead to the conclusion that none of it was exempt from Illinois use tax because all the goods stored together at one time were not "*used solely*" outside Illinois.

The foregoing result would be the same whether the cable were taken from the warehouse in several separate withdrawals, or if it were removed by a single shipment from which the cable was strung partly in Illinois and partly in Wisconsin.

By parity of reasoning, of the fuel stored at the Chicago airports, only those amounts actually burned in Illinois should be outside the scope of the temporary storage provision. This applies equally to withdrawals for departing flights which do not burn in Illinois any Illinois-loaded fuel, and by the same principles to flights which burn some Illinois-laden fuel within the State. To conclude otherwise is to impose a use tax on some 250,000,000 gallons of aviation fuel temporarily stored by United each year in Illinois and loaded aboard some 85,000 annual departing flights because a fraction of such fuel is burned on a limited number of those flights.

In contrast to such an unrealistic result is the logic of the burn-off rule: that fuel withdrawn from storage in Illinois which is burned in Illinois is taxable by this State.

As was shown in detail in United's Brief (pp. 49-50, 17 fn.), which departing flights burn fuel in Illinois and which do not readily can be established. Of those that do, the amount actually burned can be accurately determined so that the State is fully protected.

#### **D. The Court's Decision Does Not Conform to the Overall Legislative Purpose.**

The preceding analysis is supported by the fact that the Court's opinion does not seem to conform to the manifest legislative purpose.

The temporary storage provision is introduced by language in the statute declaring that its purpose is to "prevent actual or likely multistate taxation." This decision results in actual multistate taxation. All fuel involved in this litigation is purchased in Indiana by United, and is subject to the  $\frac{3}{4}\%$  Indiana gross income tax, so that the Illinois use tax is the second State tax imposed on the fuel temporarily stored in Illinois.



As previously mentioned (p. 7, *supra*) the opinion squarely distinguishes between fuel transported by United from O'Hare to Milwaukee by ground transportation and such fuel transported to that same city in the tanks of aircraft, the former being within the scope of the temporary storage provision and the latter not. Inasmuch as in both cases the fuel would be intended for use and actually used between Milwaukee and other points, the only distinction between the two is the method of transportation from Illinois to Wisconsin. There is nothing in the statutory language to support this distinction.

Finally, it is difficult to understand how the Court concludes that the Legislature intended the temporary storage provision to be unavailable to common carriers in their normal operations. The legislative history of the Use Tax Act, outlined in the Amicus Curiae Brief (pp. 19-26), demonstrates clearly that both the temporary storage provision and the related rolling stock provision were intended to protect common carriers from multistate taxation in their interstate operations.

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In light of this analysis, United submits that the language of the temporary storage provision, as applied to the storage and use of fuel by common carriers, is not so "plain, simple and unambiguous" as to lead to the conclusion reached by the Court.

## II.

**THE HELSON CASE DOES NOT PROHIBIT A USE TAX MEASURED BY FUEL WITHDRAWN FROM STORAGE IN ILLINOIS AND BURNED IN ILLINOIS IN INTERSTATE COMMERCE BECAUSE THERE IS A LOCAL EVENT UPON WHICH TO IMPOSE SUCH TAX.**

The *per curiam* opinion declined to follow the rule of contemporaneous administrative construction in part be-

cause of the belief that the doctrine of *Helson & Randolph v. Kentucky*, 279 U.S. 245 (1929), makes the burnoff rule unconstitutional.

*Helson* involved a Kentucky gasoline tax which was imposed upon the use of fuel within the State. There the interstate carrier purchased fuel in Illinois, which was brought into Kentucky in the fuel tanks of a river ferry. The only contact that fuel had with Kentucky was that it supplied the propulsive power for the interstate ferry across the Ohio River. The fuel was neither stored nor withdrawn from storage in Kentucky and had therefore never acquired a local taxable situs. Thus, the only possible incidence of the Kentucky tax was upon the consumption of the fuel in interstate commerce. Obviously, such a tax was a direct, unconstitutional burden upon interstate commerce.

Under the Illinois Use Tax Act, a tax is imposed upon the storage of fuel, or its withdrawal from storage—*except* to the extent that such storage and withdrawal are exempt under the temporary storage provision. Storage and withdrawal are local events that occur before any interstate transportation or consumption is commenced, and hence constitute a permissible basis to sustain a use tax under the Commerce Clause. See *Edelman v. Boeing Air Transport, Inc.*, 289 U.S. 249 (1933) and other authority cited in United's Brief (p. 62). Thus, United constitutionally may be subjected to the use tax whenever it stores fuel in Illinois that does not qualify under the temporary storage provision. The fuel burned in Illinois cannot qualify—because obviously it is “used” in Illinois—and, therefore, the tax which has already been incurred under the statute must be paid on that fuel. But the incidence of this tax is

the antecedent local event, the storage or withdrawal from storage at the Chicago airports, and the principle established by *Helson* is not applicable.

It is well established that if there is a proper local event upon which to base a tax, it may be measured by interstate activities, including fuel consumption within the taxing state by vehicles moving in interstate commerce. See *McCarroll v. Dixie Greyhound Lines, Inc.*, 309 U.S. 176, 178-79 (1940), holding that highway carriers engaged in interstate journeys may constitutionally be required to pay a State tax measured by the number of gallons of fuel burned within the taxing State by the carrier's vehicles which use the State's highways. See also *Thompson v. Continental Southern Lines, Inc.*, 222 Ark. 108, 257 S.W.2d 375, 377 (1953); *Larey v. Continental Southern Lines, Inc.*, 243 Ark. 278, 419 S.W.2d 610, 614 (1967); *Department of Revenue v. Greyhound Corp.*, 321 S.W.2d 60, 61 (Ky. 1959); *Lake Shore Coach Lines, Inc. v. Alger*, 327 Mich. 146, 41 N.W.2d 503, 508 (1950); *Mason & Dixon Lines, Inc. v. Commonwealth*, 185 Va. 877, 41 S.E.2d 16, 19-20 (1947), cert. denied, 331 U.S. 807 (1947).\*

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\* In various other circumstances in which a local aspect of interstate commerce was properly subject to State taxation, the courts have sustained a tax measured by the activities carried on within the taxing jurisdiction. See, e.g., *Alaska v. Arctic Maid*, 366 U.S. 199, 203-05 (1961) (occupation tax on freezer ships measured by value of fish obtained for processing); *Arctic Trans-Pacific Inc. v. Maddox*, 371 F.2d 132, 134-35 (9th Cir. 1967) (where services as agent for van and storage companies were performed in Guam, privilege tax measured by gross receipts from services was permissible); *Higman Towing Co. v. Cocresham*, 70 F. Supp. 628, 635 (E.D. La. 1947), aff'd, 165 F.2d 789 (5th Cir. 1948) (sustained income tax on petroleum transportation company measured by number of barrels transported and mileage they were transported within taxing State).

This Court has given effect to the foregoing principle in *Bode v. Barrett*, 412 Ill. 204, 219-26 (1952).

It follows from all this authority that the *per curiam* opinion's objection to a tax "measured" by burn-off is unfounded.

The relevance of the *Helson* case to this situation can be tested from a broader perspective. The belief that *Helson* precludes taxing *part* of the fuel loaded at the Chicago airports, is the first step in a reasoning sequence which leads to the conclusion that *all* the fuel loaded in Illinois can be taxed—even amounts burned outside Illinois. It seems anomalous to conclude that a tax on all the fuel, including that burned outside Illinois, constitutes less of a burden on interstate commerce than a tax on only that part actually burned in Illinois. The United States Supreme Court's decisions which have protected interstate commerce against undue State interference hardly can be read as calling for such a peculiar result.

### III.

**THE RULE OF CONTEMPORANEOUS ADMINISTRATIVE CONSTRUCTION SHOULD BE FOLLOWED IN THIS CASE TO UPHOLD THE BURN-OFF RULE WHICH IS A PERMISSIBLE CONSTRUCTION OF THE LEGISLATIVE INTENTION.**

The Court's opinion recognizes that there is a rule

"... that courts, in determining the proper construction of an ambiguous statute, will consider and give weight to the contemporaneous construction placed upon a statute by the governmental officers or departments charged with the duty of administering it, and will usually adopt such contemporaneous construction where it is a reasonably permissible construction, has the implied assent of the legislature, and has been consistent, uniform and long continued."

Here the contemporaneous construction is entitled to even greater weight, since it was announced *before* the Use Tax Bill was signed by the Governor, in response to a request for an interpretation on this precise point by one of the Legislature's managers of the Bill. The interpretation by the Department of Revenue in 1955 thus is a clear indication not only of what that Department thought the law meant on this point, but also of what the Governor intended it to mean before he signed the Bill. It is therefore entitled to be regarded as an expression of legislative understanding and not merely as a subsequent statement of administrative position.

The fact that the Department of Revenue changed its mind in 1963 obviously is not evidence of the intention of the Legislature at the time the law was passed in 1955. The Department's abrupt reversal, not based on any legislation or court decision, of its original position seems to be more akin to legislation by it rather than an effort to carry out the Legislature's intention, particularly in light of the fact that the Legislature had amended the very section of the Use Tax Act which contains the temporary storage provision in every Session from 1955 to 1963 without upsetting the burn-off rule of which its Tax Committees' members were well aware.

The four Justices comprising the majority of the Court have concluded that the statutory language is so clear and unambiguous as to justify a holding that the law meant the opposite of what those responsible for its enactment stated that it meant. With deference, this is a remarkable conclusion. The United States Supreme Court, though recognizing the "plain meaning rule", has emphasized that: "When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'" *United States v. American*



*Trucking Associations, Inc.*, 310 U.S. 534, 543-544 (1940). The "literal interpretation dogma" (*ibid.*) was also said not to justify disregard of available information as to what was originally intended. Indeed, "[t]he very legislative materials which respondent would exclude refute his assumption. It would be anomalous to close our minds to persuasive evidence of intention on the ground that reasonable men could not differ as to the meaning of the words." *United States v. Dickerson*, 310 U.S. 554, 562 (1940).

This Court found the statutory language clear in not permitting storage in the wing tanks to be treated as storage, although conceding that this might be storage "in a special or technical sense". This in itself establishes that "storage" can be used in different senses, and would therefore seem to justify resort to external material casting light on what actually was intended at the time the Act was passed.

The majority of four Justices is also of the view that the storage in the ground tanks before loading is not covered by the exemption because the fuel is not "used solely" outside Illinois. This position must be based on the assumption that the Legislature necessarily and unambiguously meant that the normal rule governing the treatment of fungible products did not apply. United submits that the discussion above (pp. 11-13, *supra*) demonstrates that the Legislature cannot have clearly and unambiguously intended to act in disregard of this general principle, particularly when at the time of enactment it was told that the specific statute provision was *not* to be so construed.

Two of the Justices in the majority in effect conclude that to construe "temporary storage" as covering the unburned fuel being transported from Illinois in the wing tanks would be contrary to the constitutional doctrine enunciated in *Helson*. We believe this an erroneous read-

ing of that decision, for reasons previously stated (pp. 15-17, *supra*). As was observed earlier, to hold that the Commerce Clause permits taxation of all the fuel loaded in United's interstate flights departing from Illinois, *including that burned outside Illinois*, but precludes taxation of only that portion of such fuel actually burned in Illinois, is certainly anomalous.

For these reasons, United respectfully submits that it cannot persuasively be said that the statutory language clearly and unambiguously means the opposite of what those responsible for the law stated at the time it was enacted, and which they uniformly followed for many years thereafter, or that their expression of understanding is irrelevant. When the principle that taxing statutes are to be strictly construed in favor of taxpayers is added to the scales, (see authority cited, U. Br. pp. 57-58), we submit that the result must be that the statute should be construed as it was by everyone during its first eight years.

Accordingly, United prays (a) that the judgment of the trial court be reversed and this cause be remanded as originally requested in United's Brief (p. 69) or (b) that this case be reargued before the Court.

Respectfully submitted,

ROBERT L. STERN

MARK H. BERENS

WILLIAM E. DOYLE

WM. BRUCE HOFF, JR.

231 South LaSalle Street

Chicago, Illinois 60604

STate 2-0600

MAYER, BROWN & PLATT  
Of Counsel

## [8] UNITED STATES OF AMERICA

STATE OF ILLINOIS }  
 SUPREME COURT } ss.

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the thirteenth day of September in the year of our Lord, one thousand nine hundred and seventy-one, within and for the State of Illinois.

Present: Robert C. Underwood, Chief Justice  
 Justice Walter V. Schaefer      Justice Thomas E. Kluczynski  
 Justice Daniel P. Ward      Justice Charles H. Davis  
 Justice Joseph H. Goldenhersh      Justice Howard C. Ryan  
 William J. Scott, Attorney General  
 Robert G. Miley, Marshal  
 Attest: Justin Taft, Clerk

BE IT REMEMBERED, that, to-wit: on the 4th day of October, A.D. 1971, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

---

UNITED AIR LINES, INC.,

Appellant

No. 43042

vs.

THEODORE A. JONES, Director of Revenue of the Department of Revenue of the State of Illinois, WILLIAM G. CLARK, Attorney General of the State of Illinois, ADLAI E. STEVENSON, III, Treasurer of the State of Illinois, and Shell Oil Co., a Delaware corporation,

Appellees

Appeal from  
 Circuit Court  
 Cook County  
 63 C 17049

---

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

[9] IN THE SUPREME COURT OF ILLINOIS

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UNITED AIR LINES, INC.,

Plaintiff-Appellant,

vs.

GEORGE E. MAHIN, Director of Revenue of  
the Department of Revenue of the State of  
Illinois, et al.,

Defendants-Appellees.

---

No. 42042

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**ORDER**

This cause having come on to be heard on the motion of plaintiff-appellant United Air Lines, Inc., to stay issuance of the mandate in the above action,

IT IS HEREBY ORDERED, pursuant to Illinois Supreme Court Rule 368(c) that the issuance of the aforesaid mandate of this Court be and is hereby stayed until completion of appeal proceedings in the above action before the United States Supreme Court.

DANIEL P. WARD  
Justice

October 13, 1971

[10]

No. 42042

IN THE  
SUPREME COURT OF ILLINOIS

---

---

**UNITED AIR LINES, INC.,**

**Plaintiff-Appellant,**

**vs.**

**GEORGE E. MAHIN**, Director of Revenue of  
the Department of Revenue of the State of  
Illinois, **WILLIAM J. SCOTT**, Attorney Gen-  
eral of the State of Illinois, **ADLAI E.**  
**STEVENSON, III**, Treasurer of the State of  
Illinois, and **SHELL OIL CO.**, a Delaware  
corporation,

**Defendants-Appellees.**

---

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**NOTICE OF APPEAL TO THE SUPREME COURT  
OF THE UNITED STATES**

Notice is hereby given that United Air Lines, Inc., the appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Illinois, entered April 1, 1971, rehearing denied, October 4, 1971.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

**MARK H. BERENS**  
Counsel for Appellant

Filed:

**Mayer, Brown & Platt**  
231 South LaSalle Street  
Chicago, Illinois 60604

**FILED**  
**DEC. 20, 1971**  
**JUSTIN TAFT, CLERK**

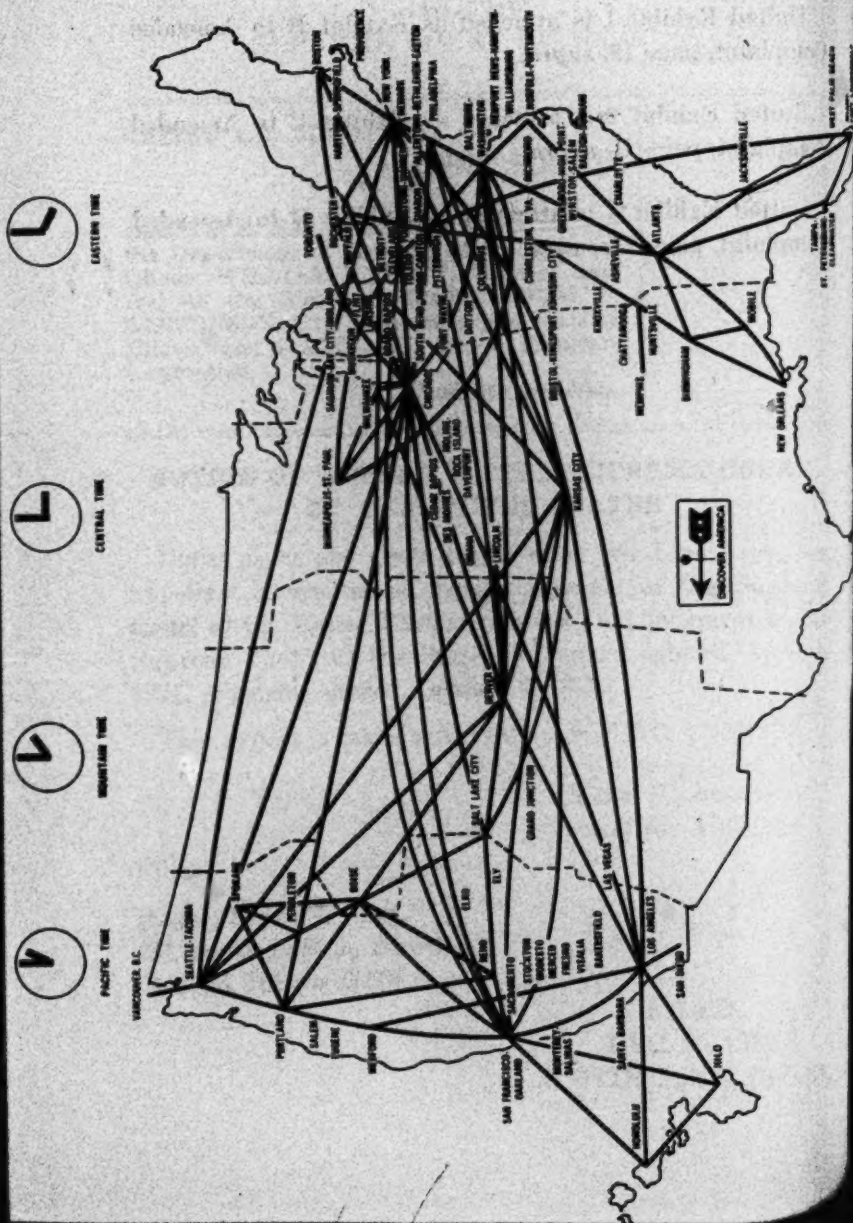


**TRIAL EXHIBITS**

United Exhibit 1 is attached as Exhibit B to Amended Complaint, page 19, *supra*.

United Exhibit 2 is attached as Exhibit C to Amended Complaint, page 21, *supra*.

United Exhibit 3 is attached as Exhibit D to Amended Complaint, page 23, *supra*.



## United Exhibit 7

United's Aircraft Fleet  
as of  
December 31, 1967

<u>Type of Aircraft</u>	<u>Schedule Service</u>	<u>Support Aircraft</u>	<u>Grounded Aircraft</u>	<u>Total</u>
Jet .....	205	30	0	235
Jet-prop .....	28	2	11	41
Piston .....	62	19	0	81
	—	—	—	—
Total .....	295	51	11	357

## United Exhibit 8

United's Average Passenger Volumes  
at O'Hare Field  
Third Quarter 1967

<u>A. Interstate</u>	<u>Per Day</u>
Originating Passengers Enplaned .....	3855
Destination Passengers Deplaned .....	3889
Passengers Carried Through Chicago .....	1114
Passengers Connecting Between United Flights .....	3872
Passengers Connecting Between United and Other Carriers .....	7744
Total Daily Passenger Volume at Chicago ...	20474
<u>B. Intrastate</u>	<u>Per Day</u>
Local Chicago-Moline, Moline-Chicago Passengers .....	155

# United Exhibit 9

232

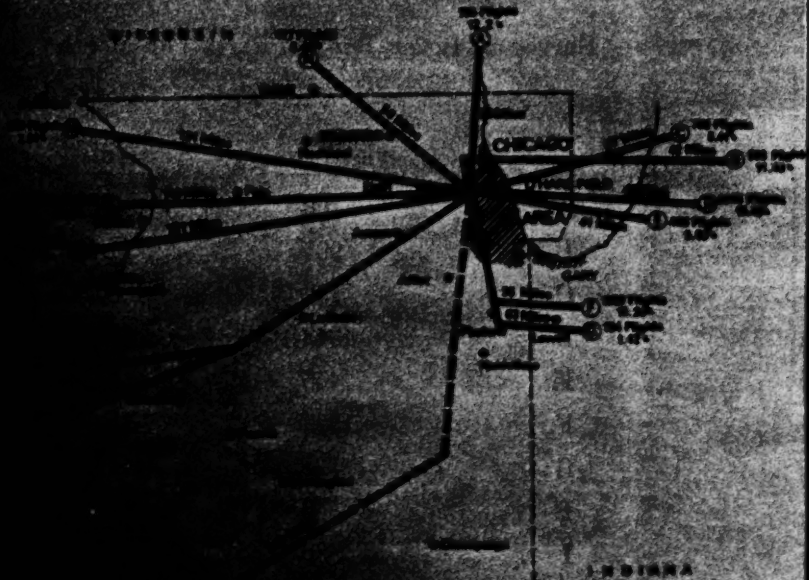
## Ground Times of United's Aircraft Operating at O'Hare Field

October 1967 Schedule

Aircraft Type	Through Flights		Short Turnaround Flights	
	Number	Average Time on Ground	Number	Average Time on Ground
Jet Passenger Aircraft .....	132	46.3 min.	30	1 hr. 42 min.
Propeller Passenger Aircraft .....	32	40.2 min.	10	1 hr. 56 min.
Subtotal Passenger Aircraft ....	164	45.1 min.	40	1 hr. 46 min.
Jet Cargo Aircraft .....	7	1 hr. 43 min.	1	1 hr. 40 min.
Propeller Cargo Aircraft .....	—	—	1	3 hr. 29 min.
Subtotal Cargo Aircraft .....	7	1 hr. 43 min.	2	2 hr. 35 min.
Total .....	171	47.4 min.	42	1 hr. 52 min.

# United's Departure Routings from Illinois

## United Exhibit 20





## United Exhibit 21

Frequency of Usage of Departure Routes  
by United FlightsSurvey of Seven Random Days Per Month  
July 1967—January 1968

<u>Route</u>	<u>Number of Flights Using</u>	<u>Percentage of Usage</u>
A	106	1.22
B	995	11.43
C	732	8.41
D	1343	15.43
E	486	5.58
F	1329	15.26
G	124	1.42
H	3	0.03
I	90	1.03
J	232	2.66
K	1842	21.16
L	308	3.54
M	639	7.34
N	477	5.48
Total	8706	100.00

MAY 18 1964

FEDERAL AVIATION AGENCY  
WESTERN REGION  
Air Carrier District Office 34  
8055 East 32nd Avenue  
Denver, Colorado 80207

EXOVF

MAY 16 1964

IN REPLY  
REFER TO: 8400May 13, 1964  
13

RECEIVED

MAY 18 1964

Mr. D. R. Petty  
Senior Vice President  
Flight Operations  
United Air Lines, Inc.  
P. O. Box 8800  
Chicago, Illinois 60666

Dear Mr. Petty:

This is in regard to your request for approval of your B-727 Flight Manual.

This office has completed the review of your manual and found it to comply with the requirements of the regulations.

Please include the following statement in your preface pages to the B-727 Manual:

"The B-727 Flight Manual provides the information essential to proper operation of the airplane. Further, it contains all pertinent procedures and information found in the FAA Approved Airplane Flight Manual. Where procedures in the B-727 Flight Manual differ from those contained in the FAA Approved Airplane Flight Manual for this airplane, United Air Lines has determined that equivalent safety is provided by such alternate procedures and assumes full responsibility for such determination."

Sincerely,

*Hiram Breiler*  
Hiram Breiler  
Operations Inspector

D. R. PETTY	
J. E. HODGSON	
J. M. CHRISTENSEN	
J. G. BROWN	
E. F. CULLERTON	
J. D. SMITH	
W. E. DOWDLE	
W. L. KERR	
E. C. BARTLEY	
G. B. FOT	
H. J. SHED	
SECRETARY	
FILE	SKB

eff SM/FET

### Fuel Burn-Out from O'Hare Field to the Illinois Border

Route*	Statute Miles	Type of Aircraft					Boeing 727 Cargo Carrels	
		DC-8 (JT3D-1)	DC-8 (JT4A-3)	DC-8 (JT3D-3)	Boeing 720	Boeing 727	Boeing 727 Cargo	Carrels
A	35	4770	5050	4850	4590	2960	3140	1860
B	57	5840	6330	5920	5730	3640	3920	2500
C	42	5080	5410	5230	4930	3190	3410	2070
D	41	5030	5350	5170	4880	3160	3380	2040
E	41	5030	5350	5170	4880	3160	3380	2040
F	55	5770	6220	5830	5620	3590	3870	2440
G	63	6120	6640	6190	6010	3820	4110	2640
H	265	11540	13360	11620	11860	7660	8280	6180
I	207	10070	11590	10130	10360	6680	7260	5210
J	176	9290	10630	9350	9540	6160	6720	4700
K	121	7890	8940	7950	8120	5230	5670	3780
L	116	7750	8780	7810	8000	5140	5560	3680
M	131	8140	9240	8210	8390	5400	5910	3960
N	58	5910	6390	5970	5790	3680	3960	2520

\* Routes as designated in Exhibit 20.

## United Exhibit 25

## Reserve Fuel Requirements for United's Aircraft

Type of Aircraft	Type of Engine	FAA Reserve Requirement (Pounds)	Additional United Reserve Requirement (Pounds)	Total Fuel Reserve (Pounds)
DC-8 (JT3D-1)	jet	8000	4000	12000
DC-8 (JT4A-3)	jet	8500	4000	12500
DC-8 (JT3D-3)	jet	8000	4000	12000
Boeing 720	jet	8000	4000	12000
Boeing 727	jet	5400	2700	8100
Boeing 727 Cargo	jet	5400	2700	8100
Caravelle	jet	4000	2000	6000
Viscount	turbo-prop	2200	1000	3200
DC-7	piston	1890	1000	2890
DC-7B	piston	1890	1000	2890
DC-6/6B	piston	1350	1000	2350
DC-6A	piston	1350	1000	2350

Note: One gallon of turbine fuel (for turbo-prop and jet engines) equals approximately 6.8 pounds. One gallon of aviation gasoline (for piston engines) equals approximately 6 pounds).

## United Exhibit 28—Page One

**Survey of Fuel  
on United's Flights Arriving at O'Hare  
August 1963 Survey**

<u>Type of Aircraft</u>	<u>Number of Flights Surveyed</u>	<u>Average Fuel on Board (Pounds)</u>	<u>Below FAA Minimum</u>	<u>Below UAL Minimum</u>
four-engine, jet (DC-8, Boeing 720)	2003	21463	6 (.03%)	28 (1.4%)
Caravelle	604	11550	5 (.83%)	17 (2.8%)
Viscount	521	5888	2 (.38%)	3 (.58%)
DC-7/7B	153	5654	1 (.65%)	2 (1.31%)
DC-6/6A/6B	1219	4789	2 (.16%)	11 (.90%)
<b>TOTAL</b>	<b>4500</b>	<b>—</b>	<b>16 (.36%)</b>	<b>61 (1.36%)</b>



## United Exhibit 26—Page Two

Survey of Fuel  
on United's Flights Arriving at O'Hare  
1967 Survey

<u>Type of Aircraft</u>	<u>Number of Flights Surveyed</u>	<u>Average Fuel on Board (Pounds)</u>	<u>Below FAA Minimum</u>	<u>Below UAL Minimum</u>
DC-8 (JT3D-1)	279	24400	0	3 (1.08%)
DC-8 (JT4A-3)	624	22500	0	9 (1.44%)
DC-8 (JT3D-3)	349	25500	0	1 (.29%)
Boeing 720	2944	22000	0	21 (.71%)
Boeing 727	7009	16100	0	17 (.24%)
Boeing 727 Cargo	610	15300	0	1 (.16%)
Caravelle	1781	13000	0	1 (.06%)
<b>TOTAL</b>	<b>13596</b>	<b>—</b>	<b>0</b>	<b>53 (.39%)</b>

# Comparison of Reserve Fuel, Landing Fuel and Burn-Out

Aircraft Type	F.A.A. Reserve	United Reserve Aug. 1948 Survey	Average Landing Fuel 1947	Median Landing Fuel 1947	Burn-Out to Illinois Border Over Engines															
					A	B	C	D	E	F	G	H	I	J	K	L	M	N		
DC-3 (JT3D-1)	8000	12000	21463	24400	4770	5840	5080	5030	5080	5770	6120	11540	10070	9290	7890	7750	8140	5910		
DC-3 (JT4A-3)	8500	12500	21463	22500	5040	6330	5410	5350	5350	6220	6640	13360	11590	10630	8940	8780	9240	6390		
DC-3 (JT3D-3)	8000	12000	21463	25500	4850	5920	5230	5170	5170	5830	6190	11620	10130	9350	7950	7810	8210	5970		
Boeing 720	8000	12000	21463	22000	4590	5730	4930	4890	4890	5620	6010	11860	10360	9540	8120	8000	8390	5790		
Boeing 727	5400	8100	—	16100	2960	3640	3190	3160	3160	3590	3820	7660	6680	6160	5230	5140	5400	3680		
Boeing 727 Cargo	5400	8100	—	15300	3140	3920	3410	3380	3380	3870	4110	8280	7260	6720	5670	5560	5910	3960		
Caravelle	4000	6000	11550	13000	1860	2500	2070	2040	2040	2440	2640	6180	5210	4700	3780	3690	3960	2520		

Defendant's Exhibit No. 1—Leasing agreement between Shell Oil Company and United Air Lines covering the storage facilities located at Des Plaines, Illinois, dated December 1, 1959, with amendments, is as follows:

MAYER, FRIEDLICH, SPIESS, TIERNEY,  
BROWN & PLATT  
231 South La Salle Street  
Chicago, Illinois 60604

February 6, 1968

EUROPEAN OFFICE  
4 Place De La Concorde  
Paris 8<sup>e</sup>  
Airtel 45-23

STam 2-0600  
CABLES  
LEMay, CHICAGO  
LEMayLAW, PARIS

BY MESSENGER

Calvin C. Campbell, Esq.  
Assistant Attorney  
State of Illinois Building  
160 North LaSalle Street  
Chicago, Illinois

Dear Calvin:

Enclosed pursuant to your recent telephone request is a copy of the Lease, dated December 1, 1959, from Shell Oil Company jointly to American Airlines Inc., Capital Airlines Inc. (since merged into United) and United Air Lines Inc., together with copies of all of the Amendments (7) thereto.

Sincerely yours,

MARK H. BERENS  
Mark H. Berens

MHB:mjr  
Enclosures

**LEASE**

**THIS IS A LEASE**, dated December 1, 1959, between **SHELL OIL COMPANY**, a Delaware corporation with offices at 50 West 50th Street, New York 20, New York (herein called "Shell"), and **AMERICAN AIRLINES, INC.**, with offices at 100 Park Avenue, New York 17, New York; **CAPITAL AIRLINES, INC.**, with offices at Washington National Airport, Washington 1, D. C.; and **UNITED AIR LINES, INC.**, with offices at 5959 South Cicero Avenue, Chicago 38, Illinois (herein called individually "Lessee" and collectively "Lessees"):

1. **DEMISE.** Shell hereby leases to Lessees, and Lessees hereby lease from Shell, the following described land situated in Elk Grove Township, Cook County, Illinois:

The West 540 feet of the North Three-Fourths of the West Half (W  $\frac{1}{2}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) of Section 23 (excepting the North 60 feet and the South 1,175 feet thereof), in Township 41 North, Range 11 East of the Third Principal Meridian;

together with: (a) an easement of ingress and egress to and from said land and Algonguin Road, over a roadway (herein called "Roadway") to be located where Shell chooses (and subject to relocation from time to time if Shell chooses), to be constructed by and at the expense of Shell, and to be used jointly by Lessees and Shell and their and its respective licensees and invitees; and (b) the building, tanks, piping and other facilities located on said land, described in Exhibit A hereof (herein collectively called "Facilities" or, with said land, "Premises"); and (c) the right to operate and use the one 12-inch-diameter receiving pipe line running from Badger Pipe Line Company's Meter Station easterly to and into the Premises, and the two parallel 6-inch-diameter

delivery pipe lines running from the Premises southerly to O'Hare Field, together with all equipment appurtenant thereto, as also described in Exhibit A (and herein collectively called "Pipe Lines"); but Shell reserves the right, for itself and for any other parties to whom it may grant the like right, from time to time in the future to operate and use the Pipe Lines in common with Lessees; provided that such right of Shell or any other party shall always be subordinate to Lessees' prior right to operate and use the Pipe Lines at such times and for such periods as Lessees' respective businesses may reasonably require, and shall be exercised always at the sole risk and expense of Shell or such other party (as the case may be); and provided, further, that so long as Lessees' aggregate movements of petroleum products through the Pipe Lines exceed a monthly average of 10,000 barrels per day, such right of Shell or any other party shall not be exercised, without the prior written consent of Lessees, for any movement through the Pipe Lines which is not part of a continuous pipe line movement, in interstate commerce, of petroleum products tendered by and consigned to the same shipper for such shipper's own consumption at destination. The locations of the Premises and the Pipe Lines are shown on Shell's Drawing GD-1769 (dated 5-22-59) which is attached hereto. Except when and to the extent that Shell has consented otherwise in writing, the Premises shall be used only for the storage and handling, and the Pipe Lines only for the movement, of aviation fuels purchased and received from Shell at East Chicago, Indiana (herein called "Shell's Aviation Fuels"). Except when otherwise expressly specified, Lessees' obligations under this Lease shall be joint and several.

2. **ADDITIONAL LESSEES.** If at any time during the continuance of this Lease any airline or other company not then a party to this Lease desires to have Shell's Aviation Fuels stored and handled on the Premises and moved through the Pipe Lines, such company may, at Shell's



option, become, and have all the rights of, a Lessee hereunder, effective not later than the date on which any of such Fuels are first delivered to the premises for such company's account; provided (a) that such company shall first have entered into a written agreement with Shell to perform and observe all of the covenants and conditions of this Lease on the part of Lessees to be performed and observed (whether severally or jointly and severally), as fully as though such company were named herein as a Lessee, and (b) that such company shall have met all reasonable requirements of the other Lessees with respect to its sharing of their joint obligations hereunder and its use of the Facilities and the Pipe Lines.

3. **TERM.** The term of this Lease shall be eight (8) years and eleven (11) months, beginning December 1, 1959, and ending October 31, 1968; provided that: (a) if at any time any Lessee no longer desires to have Shell's Aviation Fuels stored and handled on the Premises and moved through the Pipe Lines, such Lessee may terminate this Lease with respect to such Lessee alone, by giving at least thirty (30) days' prior notice to Shell; except that the Lessees named herein may not exercise this termination privilege effective prior to October 31, 1964, as to American Airlines, Inc., to December 31, 1962, as to Capital Airlines, Inc., or to December 31, 1963, as to United Air Lines, Inc.; and (b) if at any time any Lessee fails, for any cause, reasonably within its control and for at least two successive calendar months, to have any of Shell Aviation Fuels either stored or handled on the Premises or moved through the Pipe Lines, Shell may terminate this Lease with respect to such Lessee alone, forthwith by notice to such Lessee. No termination of this Lease shall relieve any or all of Lessees of any obligation to Shell which has accrued hereunder prior to the effective date of such termination, nor shall

any termination with respect to any Lessee alone, affect in any way the continuance of this Lease in full force and effect as to the other Lessees.

4. RENT. As a several and not joint obligation, each Lessee shall pay to Shell, as rent for each calendar month during the continuance of this Lease as to such Lessee, Two-tenth of One Cent (0.20¢) for each gallon of aviation turbine fuel and Three-tenths of One Cent (0.30¢) for each gallon of aviation gasoline, delivered to any pipeline or other transportation facility for delivery to the Premises by or for the account of such Lessee; provided that, for any month during which any aviation gasoline whatsoever is in storage on the Premises by or for the account of any one or more of Lessees, the rent for such month, with respect to such gasoline and whether or not any thereof is so delivered during such month for delivery to the Premises, shall be not less than \$1,575.00, which shall be the sole obligation of that Lessee (if there is but one), or the joint and several obligation of those Lessees (if there are more than one), by or for the account or accounts of which such gasoline was in such storage (each Lessee being free at any time wholly to discontinue such storage of such gasoline).<sup>\*</sup> Rent for each month shall be invoiced to each Lessee at such address as such Lessee may designate by notice to Shell, and shall be payable within 15 days after receipt of such invoice, at Shell's office at 8500 North Michigan Road, Indianapolis, Indiana, or at such other place as Shell may designate by notice to each Lessee.

5. USE. Lessees shall observe and comply with all Federal, State and Municipal laws, ordinances, regulations,

<sup>\*</sup> It is mutually agreed, however, that these rental payments of \$1,575.00 per month will not commence until the tank farm on O'Hare Field is fully completed and capable of receiving aviation gasoline for lessees' storage requirements. Contract completion date for this project is approximately November 15, 1960.

orders, licenses and permits relating to the Premises or the Pipe Lines, to any use thereof or to any activity thereon or therewith. Lessees shall pay all charges incident to Lessees' use of the Premises or the business conducted thereon, or the Pipe Lines, including all license, permit, occupation and inspection taxes and fees, all water, gas, electricity, telephone and other utility charges (no meters or accounts for which shall be in Shell's name), and all taxes on Lessees' property on the premises; and if Lessees fail to pay any of such charges or taxes which are or may become liens on the Premises, and are not being in good faith protested or contested by Lessees, Shell may pay the same and charge such payments to Lessees. Shell shall pay all property taxes on the Premises and the Pipe Lines. Lessees shall not make any attachments or additions to, or any structural alterations of, any building or tank on the Premises, or the Pipe Lines, or construct any additional buildings or structures on the Premises, or paint or place any signs on any such building, tank or structure, without Shell's prior written consent (which shall not be unreasonably withheld).

**6. MAINTENANCE AND INSURANCE OF THE PREMISES.** Lessees shall at all times keep the Premises neat and clean and maintain the same in good order and repair. Lessees shall promptly repair or replace any of the Facilities damaged, destroyed or otherwise in need of repair or replacement, by any cause other than the perils covered by a standard fire and extended coverage insurance policy (herein called "insured perils"), or the negligence of Shell or its agents or employees; and if Lessees fail so to do, Shell may make such repairs or replacements and charge to Lessees the actual cost thereof. Shell shall (and shall be exclusively entitled to) insure the Facilities against the insured perils, to their full insurable value, with insurers of Shell's selection, with loss payable to Shell, and with waiver of subrogation against Lessees and any operating agent

of Lessees. In the event of damage or destruction of any of the Facilities by any of the insured perils, Shell shall repair or replace the same; but if the Premises are rendered unfit for occupancy by any cause (whether or not among the insured perils), either Shell or Lessees may terminate this Lease forthwith by notice to the other. Shell shall have the right to enter the Premises at any time for the purpose of inspecting the same and making repairs, replacements and additions.

7. **OPERATION AND MAINTENANCE OF THE PIPE LINES.** Lessees' operation and use of the Pipe Line shall be conducted solely by and at the expense of Lessees. Shell shall maintain the Pipe Lines in good operating condition and repair, at Shell's expense; except that Shell may charge to Lessees the actual cost of any repair or replacement of the Pipe Lines necessitated by any wanton or negligent act or omission of Lessees or their agents or employees. On notice from Shell (which may be oral) Lessees shall suspend their operation of the Pine Lines whenever and so long as Shell deems it necessary to effect repairs or replacements; provided that the commencement and/or the continuance of any such suspension shall be accommodated as much as reasonably possible to Lessees' convenience, except when there is, in Shell's sole judgment, an emergency which cannot await such accommodation. Lessees shall give Shell prompt notice (which may be oral) of any condition of or affecting the Pipe Lines which does or may necessitate any repair or replacement thereof.

8. **TEMPORARY PIPE LINE.** Pursuant to letter-agreements with the Lessees named herein, each dated October 28, 1959, Shell has constructed on O'Hare Field a temporary extension of the delivery lines portion of the Pipe Lines to those Lessees' storage tanks on that Field, the location of which extension is shown on Shell's Drawing GD-1818-2 (dated 10-4-59, 2nd rev. 11-59) which is attached

hereto. Such temporary extension (including its appurtenances) shall be deemed included in the Pipe Lines, but subject to the provisions of the respective letter-agreements (which shall be deemed incorporated herein), and also to the provisions of this Lease insofar as they are not inconsistent with those of the letter-agreements; provided that Shell's right reserved in article 1, for itself and other parties, to operate and use the Pipe Lines shall not extend to such temporary extension.

9. ROADWAY MAINTENANCE. The Roadway, as located (or relocated) and constructed by Shell, shall be maintained by Lessees in good condition and repair; but Shell shall reimburse Lessees, upon demand from time to time, for that proportion of the actual reasonable cost to Lessees of such maintenance, which is fairly allocable to Shell, having regard to the nature and volume of, the normal wear and tear resulting from, and any specific damage caused by, the respective uses of the Roadway by and for the benefit of Lessees and Shell.

10. INDEMNITY. Lessees shall indemnify Shell against any and all claims, suits, liability and expense on account of injury or death of persons or damage to property caused by or happening in connection with the condition of the Premises, or Lessees' or their operating agent's maintenance, possession or use thereof, or any operations thereon, or the use of the Roadway by or for the benefit of any or all of Lessees, or the condition, operation or use of the Pipe Lines by or for the account of any or all of Lessees, and not caused by the negligence of Shell or its agents or employees.

11. ASSIGNMENT-SUBLEASING. Neither Lessees jointly nor any Lessee severally shall assign or encumber this Lease or any of their or its interests hereunder, or sublease all or any part of the Premises or the Pipe Lines,



or permit any other party, to occupy or use the same, without Shell's prior written consent (which shall not be unreasonably withheld); except that Lessees may permit any party of their selection to occupy, use and operate the Premises and the Pipe Lines as their operating agent, if such party has (as Lockheed Air Terminal, Inc. hereby has) Shell's prior written approval, and so long as such approval is not withdrawn by Shell by notice to Lessees (which approval shall not be either withheld or withdrawn unreasonably or without prior discussion with Lessees).

12. **REMEDIES.** If any Lessee defaults in payment of its rent, or initiates bankruptcy or insolvency proceedings, or fails to effect dismissal within 60 days of any such proceeding initiated against it, or makes an assignment for the benefit of creditors, or if any Lessee's interest in or under this Lease becomes vested, by operation of law or otherwise, in any other person, firm or corporation: Shell may, at its option and without notice, terminate this Lease as to such Lessee alone, and remove and exclude such Lessee from further possession of the Premises and the Pipe Lines, without prejudice to any other rights or remedies of Shell against such Lessee, or to the continuance of this Lease in full force and effect as to the other Lessees. If Lessees default in performance or observance of any of their joint and several obligations under this Lease, and fail to remedy such default within thirty (30) days after Shell gives Lessees notice thereof, Shell may, at its option and without notice, wholly terminate this Lease and re-enter and repossess the Premises and the Pipe Lines, without prejudice to any other rights or remedies of Shell. At any termination of this Lease as to any Lessee, or at any termination (including the expiration) thereof as to all Lessees, each Lessee shall remove from the Premises all of its own equipment, aviation fuels and other property then located thereon, within ninety (90) days after such termination;

and if any Lessee fails so to do, Shell may remove such property from the Premises and charge to such Lessee the actual cost of removing and storing the same.

13. **NOTICES.** All notices hereunder shall be given by registered letter or telegram, and shall be deemed given when the letter is deposited in the mail or the telegram filed with the telegraph company, postage or charges prepaid and addressed: if to Shell, at Shell's address first herein specified; if to any individual Lessee, at such Lessee's address first herein specified, or specified in a written agreement pursuant to article 2; and if to Lessees jointly, care of Lockheed Air Terminal, Inc. at .....; or to such other respective addresses as may be substituted by proper notice hereunder.

14. **ENTIRETY-EXECUTION.** This Lease merges and supersedes all prior negotiations, representations and agreements, and constitutes the entire contract, between Shell and Lessees concerning the leasing of the Premises and the use of the Pipe Lines and the Roadway, and the consideration therefor, excepting the letter-agreements referred to in article 8. Neither this Lease nor any subsequent amendment or supplement thereto shall be binding on Shell unless and until it is signed in Shell's behalf by a duly authorized representative.

15. **PILING.** American Airlines, Inc. shall file this Lease with the Civil Aeronautics Board pursuant to Section 412 of the Federal Aviation Act of 1958; and each of the other Lessees concurs in such filing.

IN WITNESS WHEREOF, this Lease is executed as of the date first herein written.

**SHELL OIL COMPANY**

By **M. W. DISCHERT**

**Manager**

**Real Estate Department**

**AMERICAN AIRLINES, INC.**

By **F. C. WISER**

**Vice Pres.—Technical Svcs.**

**CAPITAL AIRLINES, INC.**

By **ROBERT J. WILSON**

**UNITED AIR LINES, INC.**

By **CURTIS BARKES**

**Senior Vice President—**

**Finance and Property**

### **EXHIBIT A**

To Lease dated December 1, 1959, between  
Shell Oil Company and American Airlines, Inc.,  
Capital Airlines, Inc. and United Air Lines, Inc.

**Buildings, Tanks, Piping and Other Facilities Located  
on the Land described in Article 1 of the Lease.**

#### ***Buildings***

1—12' x 18' Insulated Butler type building on slab foundation with water, sewage, electrical and heating facilities.

#### ***Tanks***

Welded steel constructed in accordance with API specifications 12-C.

1—112 MB Floating Roof Tank 117' dia. x 48' Ht.

2—55 MB Floating Roof Tank 85' dia. x 48' Ht.

1—25 MB Floating Roof Tank 67' dia. x 40' Ht.

2—2 MB Cone Roof Tank 20' dia. x 36' Ht.

Above tankage equipped with standard appurtenances including swing lines, automatic gauges, mid-point thermometers, drains, stairways and necessary tank connections and valves.

#### *Earthwork and Tank Foundations*

Earthen dikes of sufficient size to hold 110% of tank capacities.

One (1) 12-foot wide gravel road across terminal property to manifold and office area, including access ramps to all tanks.

Concrete ring wall type foundations under the three (3) largest tanks and gravel mat type foundation under the three (3) smaller tanks.

#### *Terminal Receiving Piping*

Terminal receiving piping consisting of 12-inch diameter receiving manifold, valves and operators, gravitometer and pump, sump pump, 8-inch diameter secondary manifold and valves, individual tank fill lines, and electric power and controls for above pumps and valve operators.

#### *Slop Pump and Piping*

One (1) 20 HP slop loading, blending, or transfer pump with necessary manifold, valves and tank connections, including 4-inch diameter line to truck bottom loading facilities at the Northeast corner of terminal property.

#### *Delivery Piping*

Delivery piping consisting of 6-inch diameter tank suction piping from product tanks to individual products pumps and manifolds, pump discharge piping and controls to 6-inch diameter lines to O'Hare Air Field and 6-inch diameter transfer line to secondary manifold.

**Product Delivery Pumps**

1—100 HP 600 GPM Vertical A/C Pump and Motor.

1—40 HP 475 GPM Vertical A/C Pump and Motor.

**Electrical**

All necessary transformers, switch gear, distributor and control circuits, including two (2) yard flood lights.

**Fire Extinguishing Equipment**

3—25-pound CO-2 hand fire extinguishers.

**Fence**

Entire terminal enclosed by 6-foot high chain link type fence, including entrance gate.

**The Pipe Lines Referred to in Article 1 of the Lease**

**Twelve-inch Receiving Lateral** from Badger Meter Station  
One (1) 12-inch diameter pipeline from Badger Pipe Line Meter Station to terminal receiving manifold approximately 2,400 feet in length, including required valves and insulating assemblies.

**Two 6-inch Delivery Lines to O'Hare Air Field**

Two (2) parallel 6-inch diameter pipelines from terminal shipping manifolds and pumps to O'Hare Field future airline storage area approximately 15,500 feet in length, including required regulation valves, filter separators, manifold tie-ins, manifold valves and controls.



**SHELL OIL COMPANY**

50 West 50th Street

New York 20, N. Y.

September 23, 1960

Capital Airlines, Inc.  
Washington National Airport  
Washington 1, D.C.

Attention Mr. R. W. Schwank  
Director of Procurement and Supply

Gentlemen:

Reference is made to the Lease between Shell Oil Company, as lessor, American Airlines, Inc., Capital Airlines, Inc. and United Air Lines, Inc., as Lessees, dated December 1, 1959, covering land and facilities in Elk Grove Township, Cook County, Illinois, and particularly to article 8 thereof, as well as the October 28, 1959, letter agreements referred to therein, relating to the temporary pipe line on O'Hare Field.

As necessitated by the O'Hare Airport construction program, we propose to relocate approximately 1500 feet of the temporary pipe line to the temporary refueling points and receiving facilities, all in accordance with our attached plans numbered GC-640 and GC-1982 and attached estimate of cost of \$17,500.00. Plans and specifications will be approved by the City of Chicago through Naess and Murphy, its architects, and the work will be performed by our contractors on an open end contract.

We propose to receive reimbursement for this relocation expenditure by making additional charges to the named Lessees using the temporary pipe line, at the rate of 0.28 cent per gallon of aviation fuels pumped through that line until we have recovered the cost to us of such relocation.

When the temporary pipe is no longer required, we propose to dismantle it and make such charges against, and issue such credits to the named Lessees, as provided in the letter agreements of October 28, 1959.

This proposal is conditioned upon acceptance by all of the named Lessees. If it meets with your approval, kindly signify your acceptance by signing in the space below and returning to us the accompanying copy of this letter.

Very truly yours,  
SHELL OIL COMPANY  
By GEORGE G. HUGHES

Agreed:  
CAPITAL AIRLINES, INC.  
By ROBERT J. WILSON

Estimate—O'Hare Field  
Piping and Strainer Changes

Stage I—Install 1550'—6" Diameter Incoming Line, Relocate  $\frac{1}{2}$  Strainer Installation, and Install 2 Vv Manifold

a. Install 1550'—6" Diameter Pipe

*Materials*

1550'—6" Diameter Sch 40	\$ 2,500
1—6" Diameter Gate Vv	220
1—6" Diameter Mueller Pot	300

*Installation*

Welding—Mueller	300
Welding—Line	
36—6" Diameter @ \$16	580
Ditching and Road Boring	500
Lay and Carry—1550' @ .25/ft.	360
Mueller Operation	1,000
(Including Rental)	

---

Total Pipe Installation \$ 5,750

**b. Relocate 1/2 Strainer Installation****Materials****Concrete and Reinforcing Rod**

11 cy @ \$15 \$ 165

Rod 50

Weld Fittings 175

**Installation**

Foundation 750

Move Strainers 750

**Welding**

4" Diameter—21 @ \$11 231

6" Diameter— 6 @ \$16 128

**Make-up Piping and Drain-up**

Existing 1,500

---

Total Strainer Installation \$ 3,750**c. Install 2 Vv Manifold****Materials**

Weld Fittings \$ 335

**Installation****Welding**

3—6" Diameter @ \$16 \$ 50

10—4" Diameter @ \$11 110

**Make-up Piping and Drain-up**

Existing 500

---

Total 2 Vv Manifold

Installation \$ 995

Sub Total State I \$10,495

**Stage II—Remove 2780'—6" Pipe and Strainer Foundation, and Relocate  $\frac{1}{2}$  Strainer**

**a. Remove 2780'—6" Existing Pipe and Strainer Foundation**

Remove 2780'—6" Diameter Pipe

@ \$0.50/ft.

\$ 1,390

(Less Credit for Pipe)

(1,120)

Remove Strainer Foundation

750

**Total Removal**

\$ 1,020

**b. Relocate and Install  $\frac{1}{2}$  Strainer**

\$ 2,000

**Sub Total Stage II**

\$ 3,020

**Total Stages I and II (Piping)**

\$13,515

**Electric and Control Facilities**

**Installation**

Mat'l

\$ 750

Labor

1,000

**Removal Cost**

200

\$ 1,950

**Engineering and Expenses**

\$ 485

**Contingencies—10%**

1,550

**Grand Total**

\$17,500

**FIRST AGREEMENT AMENDING LEASE**

**THIS IS AN AGREEMENT**, dated Oct. 6, 1961, between **SHELL OIL COMPANY**, a Delaware corporation ("Shell"), and **AMERICAN AIRLINES, INC., CAPITAL AIRLINES, INC., and UNITED AIR LINES** (collectively "Lessees"), with reference to the Lease between them dated December 1, 1959, of Premises, including land and Facilities, situated in Elk Grove Township, Cook County, Illinois,

**THAT**, effective as of October 27, 1960:

1. The description in article 1 of the Lease, of the land situated in Elk Grove Township, Cook County, Illinois, is amended to read as follows:

The West 540 feet of the North Three-Fourths of the West Half of the Southeast Quarter of Section 23 (except the South 1175 feet thereof) in Township 41 North, Range 11 East of the Third Principal Meridian; also

The East 334 feet of Lot 3 in Friedrich Busse, Jr.'s Division of Land in Section 23, Township 41 North, Range 11 East of the Third Principal Meridian as recorded February 20, 1911, in Office of Recorder of Cook County, in Book 113 of Plats, Page 21, as Document No. 4709799.

2. Exhibit A attached to the Lease is replaced and superseded by, and clause (b) of article 1 of the Lease shall be deemed to refer to, Exhibit A (First Revision) which is attached to this Agreement.

3. The antepenultimate sentence of article 1 of the Lease shall be deemed to refer not only to Shell's drawing GD-1769 (dated 5-22-59) which is attached to the Lease, but also to Shell's Drawing GD-1777-5 (dated 2-26-60, last revised 2/61), which is attached to this Agreement.

4. With respect to the land described in article 1 hereof which is additional to that described in original article 1 of



the Lease, and with respect to the tanks and other facilities described in Exhibit A (First Revision) which are in addition to, or described in any way differently from, those described in Exhibit A: the latter are included in the Facilities and, together with the additional land, included in the Premises, and are hereby leased by Shell to Lessees and by Lessees from Shell, on all of the covenants and conditions of the Lease, all of which are hereby confirmed and continued.

5. The first sentence of article 8 of the Lease shall be deemed to refer to Shell's Drawing GD-1818-3 (dated 10-14-59, last revised 6/3/60), which is the second of the Drawings actually attached to the Lease.

6. The address of Lockheed Air Terminal, Inc., for the purpose of article 13 of the Lease, is Lockheed Air Terminal, Inc. P.O. Box 8784, O'Hare International Station, Chicago 66, Illinois.

**EXECUTED** as of the date first herein written.

**SHELL OIL COMPANY**

By **M. W. DISCHERT**  
Real Estate Department

**AMERICAN AIRLINES, INC.**

By **JAMES J. LAMOND, JR.**

**\*CAPITAL AIRLINES, INC.**

By .....

**UNITED AIR LINES, INC.**

By **CURTIS BARKES**  
Executive Vice President—  
Finance and Property

\* Not executed by Capital Airlines, Inc. because of the merger effective June 1, 1961, of Capital into United Air Lines, Inc.

**EXHIBIT A (FIRST REVISION)**

To Lease dated December 1, 1959, between  
Shell Oil Company and American Airlines, Inc.  
Capital Airlines, Inc. and United Air Lines, Inc.

**Buildings, Tanks, Piping and Other Facilities Located  
on the Land described in Article 1 of the Lease.**

***Buildings***

1—12' x 18' Insulated Butler type building on a slab foundation with water, sewage, electrical and heating facilities.

***Tanks***

Welded steel constructed in accordance with API specifications 12-C.

2—112 MB Floating Roof Tank 120' dia. x 56' Ht.

2—55 MB Floating Roof Tank 85' dia. x 56' Ht.

1—25 MB Floating Roof Tank 67' dia. x 40' Ht.

2—2 MB Cone Roof Tank 20' dia. x 36' Ht.

Above tankage equipped with standard appurtenances including swing lines, automatic gauges, mid-point thermometers, drains, stairways and necessary tank connections and valves.

***Earthwork and Tank Foundations***

Earthen dikes of sufficient size to hold 110% of tank capacities.

One (1) 12-foot wide gravel road across terminal property to manifold and office area, including access ramps to all tanks. One (1) 12-foot wide gravel road from gate at NE corner of leased area to Tank DP-74 approximately 1100' in length including ramp. Concrete ring wall type foundations under the four (4) largest tanks and gravel mat type foundations under the three (3) smaller tanks.

***Terminal Receiving Piping***

Terminal receiving piping consisting of 12-inch diameter receiving manifold, valves and operators, gravitometer and pump, sump pump, 6-inch diameter secondary manifold and valves, individual tank fill lines, and electric power and controls for above pumps and valve operators.

***Slop Pump and Piping***

One (1) 20 HP slop loading, blending, or transfer pump with necessary manifold, valves and tank connections, including 4-inch diameter line to truck bottom loading facilities at the Northeast corner of terminal property.

***Delivery Piping***

Delivery piping consisting of 6-inch diameter tank suction piping from product tanks to individual products pumps and manifolds, pump discharge piping and controls to 6-inch diameter lines to O'Hare Air Field and 6-inch diameter transfer line to secondary manifold.

***Product Delivery Pumps***

1—100 HP 600 GPM Vertical A/C Pump and Motor.

2—40 HP 475 GPM Vertical A/C Pump and Motor.

***Electrical***

All necessary transformers, switch gear, distributor and control circuits, including two (2) yard flood lights.

***Fire Extinguishing Equipment***

3—25-pound CO-2 hand fire extinguishers.

***Fence***

Entire terminal enclosed by 6-foot high chain link type fence, including entrance gate.

**The Pipe Lines Referred to in Article 1 of the Lease**

***Twelve-inch Receiving Lateral from Badger Meter Station***

One (1) 12-inch diameter pipeline from Badger Pipe Line Meter Station to terminal receiving manifold approximately 2,400 feet in length, including required valves and insulating assemblies.

***Two 6-inch Delivery Lines to O'Hare Air Field***

Two (2) parallel 6-inch diameter pipelines from terminal shipping manifolds and pumps to O'Hare Field airline storage area approximately 15,500 feet in length, including required regulation valves, filter separators, manifold tie-ins, manifold valves, controls, lay tanks, spheroid receiving barrel, meters and registres.

**SHELL OIL COMPANY**

50 West 50th Street  
New York 20, N. Y.

November 8, 1962

United Air Lines, Inc.

P.O. Box 8800

Chicago 66, Illinois

Attention Mr. J. H. Stark

Petroleum Administrator

Gentlemen:

Effective as of November 1, 1962, we reduced the rent under your December 1, 1959, Lease of our Des Plaines Terminal (UAL Contract No. 11267), from \$0.0020 per

gallon to \$0.0010 per gallon, subject, however, to revocation by us in whole or in part at any time by written notice to you.

Yours very truly,

GEORGE G. HUGHES

G. G. Hughes, Manager

Aviation Sales—Central Area

Aviation Sales Department

United Air Lines, Inc., in acknowledging the aforesaid rate reduction, does so with the express understanding and agreement of Shell that in the event the amended rate is revoked in whole or in part as aforesaid, that the new rate so established by Shell, shall not exceed in any event during the term of the subject agreement, the amount of \$0.0015 per gallon. Will you kindly indicate your acknowledgment and agreement to this qualification by signing a copy of this letter in the space provided below and returning same to United.

READ, ACKNOWLEDGED, AND  
AGREED TO THIS 20th DAY OF  
NOVEMBER, 1962.

UNITED AIR LINES, INC.

By CURTIS BARKES

Title: Executive Vice President—  
Finance and Property

READ, ACKNOWLEDGED, AND  
AGREED TO THIS 30th DAY OF  
NOVEMBER, 1962.

SHELL OIL COMPANY

By GEORGE G. HUGHES

Manager Aviation Sales

Central Area

Aviation Sales Department



**SHELL OIL COMPANY**

50 West 50th Street  
New York 20, N. Y.

February 1, 1963

United Air Lines, Inc.  
P.O. Box 8800  
Chicago 66, Illinois

Attention Mr. J. H. Stark  
Petroleum Administrator

Gentlemen:

This refers to the letter agreement dated November 8, 1962 (UAL Contract No. 11267-3), in which we advised that effective November 1, 1962, we were reducing the rent under your December 1, 1959, lease of our Des Plaines terminal (UAL Contract No. 11267) to \$0.0010 per gallon.

Please accept this as our notice that effective January 1, 1963, the rent has been increased from \$0.0010 per gallon to \$0.0015 per gallon.

Yours very truly,

GEORGE G. HUGHES  
G. G. Hughes, Manager  
Aviation Sales—Central Area  
Aviation Sales Department

**FIFTH AGREEMENT AMENDING LEASE**

THIS IS AN AGREEMENT, dated June 10, 1964 between SHELL OIL COMPANY, a Delaware corporation ("SHELL"), and AMERICAN AIRLINES, INC., and UNITED AIR LINES (successor to Capital Airlines, Inc.) (collectively "Lessees"), with reference to the Lease between them dated December 1, 1959 (as amended), of

Premises, including land and facilities, situated in Elk Grove Township, Cook County, Illinois.

THAT, effective as of June 10, 1964

1. The description in article 1 of the Lease, of the land situated in Elk Grove Township, Cook County, Illinois, is amended to read as follows:

Starting at a point on the center line of section 23, township 41 north, range 1 east of the third principal meridian, located 825 feet south of the center of said section, said point being the "point of beginning" thence east along Shell's south property line 540 feet to a point, thence north 438 feet to a point, thence west 174 feet to a point, thence south 111 feet to a point, thence west 18 feet to a point, thence north 88 feet to a point, thence west 332 feet along the center line of a tank dike to a point, thence north 410 feet to a point, thence west 16 feet to the center of said section 23, thence west 337 feet to a point, thence south 825 feet to a point on Shell's south property line, thence east 337 feet to the point of beginning.

2. Exhibit A attached to the Lease is replaced and superseded by, and clause (b) of article 1 of the Lease shall be deemed to refer to, Exhibit A (Second Revision) which is attached to this Agreement.

3. The antepenultimate sentence of article 1 of the Lease shall be deemed to refer to Shell's drawings GD-1777-8 (dated 4/8/64, revised April 17, 1964), and CD-13-36-1 (dated 2/4/64) attached to this Agreement and supercedes both Drawings GD-1769 and GD-1777-5.

4. Article 3 of the Lease is amended to read and provide as follows: 3. Term. The term of this Lease shall be eleven (11) years and one (1) month, beginning December 1, 1959, and ending December 31, 1970; provided that: (a) if at any time any Lessee no longer desires to have

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aviation fuels purchased from Shell stored and handled on the Premises and moved through the Pipe Lines, such Lessee may terminate this Lease with respect to such Lessee alone, by giving at least thirty (30) days' prior notice to Shell; except that this termination privilege may not be exercised by American Airlines, Inc., effective prior to October 31, 1966, or by United Air Lines, Inc., effective prior to December 31, 1970; and (b) if at any time any Lessee fails, for any cause reasonably within its control and for at least two successive calendar months, to have any of the aviation fuels purchased from Shell either stored or handled on the Premises or moved through the Pipe Lines, Shell may terminate this Lease with respect to such Lessee alone, forthwith by notice to such Lessee. No termination of this Lease shall relieve any or all of Lessees of any obligation to Shell which has accrued hereunder prior to the effective date of such termination, nor shall any termination with respect to any Lessee alone, affect in any way the continuance of this Lease in full force and effect as to the other Lessees.

5. The Lease, as heretofore and hereby amended, is confirmed and continued.

**EXECUTED** as of the date first herein written.

**SHELL OIL COMPANY**

By **R. M. ADAMSON**

**AMERICAN AIRLINES, INC.**

By **H. J. TELLEMAN**  
Regional Vice President—  
Chicago

**UNITED AIR LINES, INC.**

By **CURTIS BARKER**  
Executive Vice President—  
Finance and Property

# EXHIBIT A (SECOND REVISION)

To Lease dated December 1, 1959, between Shell Oil Company and American Airlines, Inc. Capital Airlines, Inc. and United Air Lines, Inc.

**Buildings, Tanks, Piping and Other Facilities Located on the Land described in Article 1 of the Lease.**

## Buildings

1—12' x 18' Insulated Butler type building on a slab foundation with water, sewerage, electrical and heating facilities.

## Tanks

Welded steel constructed in accordance with API specifications 12-C.

1—120,000 barrel Floating Roof Tank 124' Dia. x 56' ht. (Tank DP-73)

2—112,000 barrel Floating Roof Tank 120' dia. x 56' ht. (Tanks DP-70 and DP-74)

2—2,000 barrel Cone Roof Tank 20' dia. x 36' ht. (Tanks DP-90 and DP-91)

Above tankage equipped with standard appurtenances including swing lines, automatic gauges, mid-point thermometers, drains, stairways and necessary tank connections and valves.

## Filtration Facility

7—6 inch Dorr-Clone #2400 Filters

4—Commercial Filter Corporation Model 42M36 Clay Filters

2—Bendix "Go-No-Go" Filter

Model 20-500 GPM

#043005- (#720)

1—1,000 gallon Sump Tank

1—Tuthell Sump Pump

1—4 inch x 6 inch x 10 1/2 CAM Bingham Pump  
125 H.P. Motor 3 phase, 60 cycle, 440 volts  
3600 RPM TEFC CL-1 Group D

**Explosion Proof Westinghouse Motor Frame 607S****1—Separator Box**

Above facility equipped with necessary piping, manifolds and valves.

***Earthwork and Tank Foundations***

Earthen dikes of sufficient size to hold 110% of tank capacities.

One (1) 12-foot wide gravel road across terminal property to manifold and office area, including access ramps to all tanks. One (1) 12-foot wide gravel road from gate at NE corner of leased area to Tank DP-74 approximately 1100' in length including ramp. Concrete ring wall type foundations under the three (3) largest tanks and gravel mat type foundations under the two (2) smaller tanks.

***Terminal Receiving Piping***

Terminal receiving piping consisting of 12-inch diameter receiving manifold, valves and operators, gravitometer and pump, sump pump, 6-inch diameter secondary manifold and valves, individual tank fill lines, and electric power and controls for above pumps and valve operators.

***Slop Pump and Piping***

One (1) 20 HP slop leading, blending, or transfer pump with necessary manifold, valves and tank connections, including 4-inch diameter line to truck bottom loading facilities at the Northeast corner of terminal property.

***Delivery Piping***

Delivery piping consisting of 6-inch diameter tank suction piping from product tanks to individual products pumps and manifolds, pump discharge piping and controls to two 6-inch diameter lines to O'Hare Air Field and 6-inch diameter transfer line to secondary manifold.



***Product Delivery Pumps***

1—100 HP 600 GPM Vertical A/C Pump and Motor.

2—40 HP 475 GPM Vertical A/C Pump and Motor.

***Electrical***

All necessary transformers, switch gear, distributor and control circuits, including two (2) yard flood lights.

***Fire Extinguishing Equipment***

3—25-pound CO-2 hand fire extinguishers.

***The Pipe Lines Referred to in Article 1 of the Lease******Twelve-inch Receiving Lateral from Badger Meter Station***

One (1) 12-inch diameter pipeline from Badger Pipe Line Meter Station to terminal receiving manifold approximately, 2400 feet in length, including required valves and insulating assemblies.

***Sixteen-inch Receiving Lateral from West Shore Meter Station***

One (1) 16-inch diameter pipe line from West Shore Pipe Line Meter Station to terminal receiving manifold approximately 2400 feet in length, including required valves and insulating assemblies.

***Two 6-inch Delivery Lines to O'Hare Air Field***

Two (2) parallel 6-inch diameter pipelines from terminal shipping manifolds and pumps to O'Hare Field airline storage area approximately 15,500 feet in length, including required regulation valves, filter separators, manifold tie-ins, manifold valves, controls, hay tanks, spheriod receiving barrel, meters and registers.

**SIXTH AGREEMENT AMENDING LEASE**

THIS IS AN AGREEMENT, dated October 5, 1966 between SHELL OIL COMPANY, a Delaware corporation ("SHELL"), and AMERICAN AIRLINES, Inc., and

UNITED AIR LINES (successor to Capital Airlines, Inc.) (collectively "Lessees"), with reference to the Lease between them dated December 1, 1959 (as amended), of Premises, including land and facilities, situated in Elk Grove Township, Cook County, Illinois.

THAT, effective as of September 1, 1966,

1. The description in article 1 of the Lease, of the land in Elk Grove Township, Cook County, Illinois, is amended to read as follows:

Starting at a point on the center line of section 23, township 41 north, range 1 east of the third principal meridian, located 825 feet south of the center of said section, said point being the "point of beginning" thence east along Shell's south property line 540 feet to a point, thence north 438 feet to a point, thence west 174 feet to a point, thence south 111 feet to a point, thence west 18 feet to a point, thence north 88 feet to a point, thence west 332 feet along the center line of a tank dike to a point, thence north 410 feet to a point, thence west 16 feet to the center of said section 23, thence west 337 feet to a point, thence south 395 feet to a point, thence west 311 feet to a point, thence south 430 feet to a point on Shell's south property line, thence east 648 feet to the point of beginning.

2. Exhibit A attached to the Lease is replaced and superseded by, and clause (b) of article 1 of the Lease shall be deemed to refer to, Exhibit A (Third Revision) which is attached to this Agreement.

3. The antepenultimate sentence of article 1 of the Lease shall be deemed to refer to Shell's drawings GD-1777-10 (dated 4/8/64, revised 9/9/66), and CD-13-36-5 (dated 2/4/64, revised 7/19/66) which are attached to this Agreement and supersede both Drawings GD-1777-8 and CD-13-36-1.

4. Article 3 of the Lease is amended to read and provide as follows:

3. **TERM.** The term of this Lease shall be eleven (11) years and eleven (11) months, beginning December 1, 1959, and ending October 31, 1971; provided that: (a) if at any time any Lessee no longer desires to have aviation fuels purchased from Shell stored and handled on the Premises and moved through the Pipe Lines, such Lessee may terminate this Lease with respect to such Lessee alone, by giving at least thirty (30) days' prior notice to Shell; except that this termination privilege may not be exercised by United Air Lines, Inc., effective prior to December 31, 1970, or by American Airlines, Inc., effective prior to October 31, 1971, and (b) if at any time any Lessee fails, for any cause reasonably within its control and for at least two successive calendar months, to have any of the aviation fuels purchased from Shell either stored or handled on the Premises or moved through the Pipe Lines, Shell may terminate this Lease with respect to such Lessee alone, forthwith by notice to such Lessee. No termination of this Lease shall relieve any or all of Lessees of any obligation to Shell which has accrued hereunder prior to the effective date of such termination, nor shall any termination with respect to any Lessee alone, affect in any way the continuance of this Lease in full force and effect as to the other Lessees.

5. Article 4 of the Lease is amended to read and provide as follows:

4. **RENT.** As a several and not joint obligation, each Lessee shall pay to Shell, as rent for each calendar month during the continuance of this Lease as to such Lessee, 0.07 cent per gallon for each gallon of aviation turbine fuel delivered to any pipeline or other transportation facility for delivery to the Premises by or for the account of such Lessee. Rent for each month shall be invoiced to each Lessee at such address as such

Lessee may designate by notice to Shell and shall be payable within 15 days after receipt of such invoice to Shell Oil Company, P.O. Box 756, Church Street Station, New York, New York 10008 or at such other place as Shell may designate by notice to each Lessee.

6. The Lease, as heretofor and hereby amended, is confirmed and continued.

**SHELL OIL COMPANY**  
By **E. D. MAXFIELD**

**AMERICAN AIRLINES, INC.**  
By **H. J. TILLMAN**

**UNITED AIR LINES, INC.**  
By **CURTIS BARKES**  
**Executive Vice President—**  
**Finance and Property**

**EXHIBIT A (THIRD REVISION)**

To Lease dated December 1, 1959, between  
Shell Oil Company and American Airlines, Inc.  
Capital Airlines, Inc. and United Air Lines, Inc.

**Buildings, Tanks, Piping and Other Facilities Located  
on the Land described in Article 1 of the Lease.**

*Buildings*

1—12' x 18' Insulated Butler type building on a slab foundation with water, sewage, electrical and heating facilities.

*Tanks*

Welded steel constructed in accordance with API specifications 650—Appendix "D".

2—120,000 barrel Cone Roof Tank 124' Dia. x 56' ht. (Tanks DP-73 and DP-75).

2—112,000 barrel Floating Roof Tank 120' Dia. x 56' ht. (Tanks DP-70 and DP-74).

2—2,000 barrel Cone Roof Tank 20' Dia. x 36' ht. (Tanks DP-90 and DP-91).

Above tankage equipped with standard appurtenances including swing lines, automatic gauges, mid-point thermometers, drains, stairways and necessary tank connections and valves.

*Filtration Facility*

7—6 inch Dorr-Clone #2400 Filters

5—Commercial Filter Corporation  
Model 42M36 Clay Filters

2—Bendix "Go-No-Go" Filters  
Model 20-500 GPM  
#0435005-(#720)

1—1,000 gallon Sump Tank

1—Tuthell Sump Pump



1—4 inch x 6 inch x 10½ CAM Bingham Pump 125 H.P.  
Motor 2 phase, 60 cycle, 440 volts 3600 RPM TEFC CL-1  
Group D

Explosion Proof Westinghouse Motor Frame 607S

1—Separator Box

1—Millipore Micro-Scan (Cat. #XM01-000-00).

Above facility equipped with necessary piping, manifolds and valves.

### *Earthwork and Tank Foundations*

Earthen dikes of sufficient size to hold 110% of tank capacities.

One (1) 12-foot wide gravel road across terminal property to manifold and office area, including access ramps to all tanks. One (1) 12-foot wide gravel road from gate at NE corner of leased area to Tank DP-74 and DP-75 approximately 1100' in length including ramp. Concrete ring wall type foundations under the four (4) largest tanks and gravel mat type foundations under the two (2) smaller tanks.

### *Terminal Receiving Piping*

Terminal receiving piping consisting of 12-inch diameter receiving manifold, valves and operators, gravitometer and pump, sump pump, 6-inch diameter secondary manifold and valves, individual tank fill lines, and electric power and controls for above pumps and valve operators.

### *Slop Pump and Piping*

One (1) 20 HP slop loading, blending, or transfer pump with necessary manifold, valves and tank connections, including 4-inch diameter line to truck bottom loading facilities at the Northeast corner of terminal property.

### *Delivery Piping*

Delivery piping consisting of 6-inch diameter tank suction piping from product tanks to individual products

pumps and manifolds, pump discharge piping and controls to two 6-inch diameter lines to O'Hare Air Field and 6-inch diameter transfer line to secondary manifold.

***Product Delivery Pumps***

1—100 HP 600 GPM Vertical A/C Pump and Motor.

2—40 HP 475 GPM Vertical A/C Pump and Motor.

***Electrical***

All necessary transformers, switch gear, distributor and control circuits, including two (2) yard flood lights.

***Fire Extinguishing Equipment***

3—25-pound CO-2 hand fire extinguishers.

***The Pipe Lines Referred to in Article 1 of the Lease***

***Twelve-inch Receiving Lateral from West Shore Meter Station***

One (1) 12-inch diameter pipeline from Badger Pipe Line Meter Station to terminal receiving manifold approximately 2400 feet in length, including required valves and insulating assemblies.

***Sixteen-inch Receiving Lateral from West Shore Meter Station***

One (1) 16-inch diameter pipe line from West Shore Pipe Line Meter Station to terminal receiving manifold approximately 2400 feet in length, including required valves and insulating assemblies.

***Two 6-inch Delivery Lines to O'Hare Air Field***

Two (2) parallel 6-inch diameter pipelines from terminal shipping manifolds and pumps to O'Hare Field airline storage area approximately 15,500 feet in length, including required regulation valves, filter separators, manifold tie-ins, manifold valves, controls, hay tanks, spheroid receiving barrel, meters and registers.

June 2, 1967

Shell Oil Company  
450 North Meridian Street  
Indianapolis, Indiana 46204

Attention: Mr. W. D. Turner

Gentlemen:

*Re: UAL Contract No. 11367*

This letter will evidence United Air Lines' consent, as required by Section 1 of the subject contract, to the partial use by Shell Oil Company of one of the two 6 inch parallel pipelines which run between the Des Plaines facility and the O'Hare Terminal, such use to be under the terms and conditions set forth in Mr. Turner's letter of May 27, 1967 only.

This consent is conditioned on the understanding that such use by Shell shall, as provided in the lease, be subordinate to the Lessee's prior right to operate and use the Pipe Lines at such times and for such periods as the Lessees' respective businesses may reasonably require, and on the understanding that Shell pay its proportionate share for use of the facility.

Very truly yours,

UNITED AIR LINES, INC.

By **CURTIS BARKES**

Title: Executive Vice President—  
Finance and Property

January 23, 1968

Mayer, Friedlich, Spiess, Tierney,  
Brown & Platt  
231 S. LaSalle Street  
Chicago, Illinois 60604

Gentlemen:

*Attention: Mr. Mark H. Berens*

Re: United Air Lines v. Jones, et al, 63 C 17049

This is in response to your letter of December 22, 1967.

In a 1958 decision in the case of Consolidated Freightways v. Department of Revenue, 54 S 1659, the Superior Court of Cook County indicated that an interstate carrier should be entitled to a motor fuel tax refund with respect to motor fuel purchased in this State but used on the highways of Wisconsin and with respect to which Wisconsin MFT was paid.

Subsequent thereto, in 1959, Section 13 of the Motor Fuel Tax Law was amended by deleting the words "of this State" after the words "public highways" in the first sentence of that section; and was at that time further amended to read: "No refund shall be claimed by or allowed to any person on account of tax paid on motor fuel bought in this State and taken out of this State in the ordinary fuel tank of a motor vehicle." Section 2 of the Act retains the limitation "of this State", however.

We trust that this is the information which you seek.

Sincerely,  
Theodore A. Jones  
Director

By:

Eugene F. Corrigan, Supervisor  
Rules & Regulations Division  
Chicago Office  
Phone: 316-2000, Ext. 441